STEWARTON PARISH COUNCIL.

25th June, 1913.

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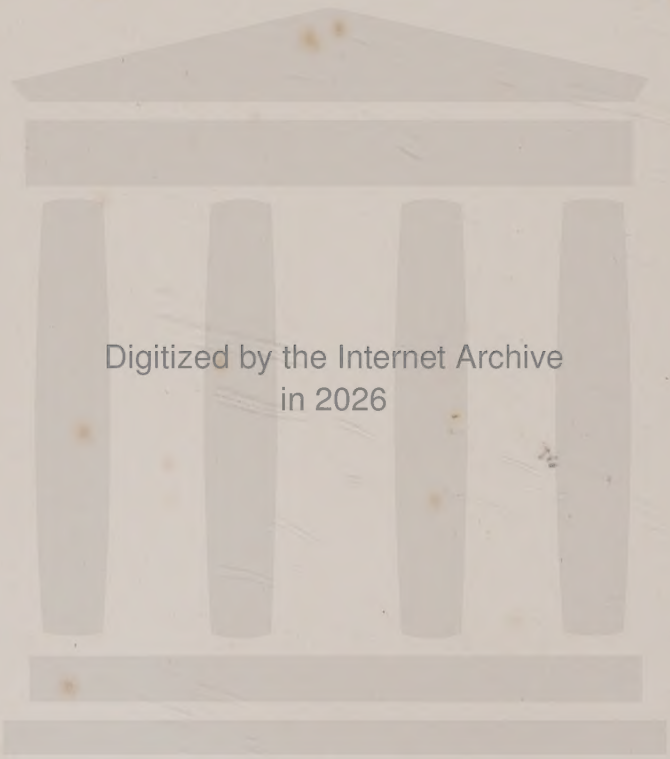
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THE LOCAL GOVERNMENT (SCOTLAND) ACT, 1894.

THE

LOCAL GOVERNMENT (SCOTLAND) ACT, 1894,

AND RELATIVE PROVISIONS OF OTHER STATUTES,

WITH NOTES AND INDEX.

BY

C. CLEVELAND ELLIS,

OF THE LOCAL GOVERNMENT BOARD FOR SCOTLAND;
AUTHOR OF "THE OLD AGE PENSIONS ACTS," 1908 AND 1911.

ELLIS.—At 14 Comiston Drive, Edinburgh, on 7th July, 1931, C. Cleveland Ellis, O.B.E., General Inspector, Department of Health for Scotland, in his 60th year.—Funeral on Friday, 10th July, to Morningside Cemetery; friends desiring to attend kindly meet cortege at cemetery gate at 2.15; this the only intimation and invitation.

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PREFACE.

NEARLY eighteen years have elapsed since the Local Government (Scotland) Act, 1894, was placed on the Statute Book, and during that period many decisions on legal points arising under its provisions have been pronounced, both by the Courts and by the Local Government Board for Scotland. Moreover, subsequent legislation has resulted in several repeals and amendments of the original enactments. From the commencement of the Act I have been closely associated with its administration, and have formed the opinion that a manual dealing more comprehensively with its provisions than any hitherto published would be welcomed by parochial officials and others. My aim has been to collate the various decisions of the Courts and opinions of the Board under the appropriate sections of the Act, and to supplement them by such additional information as experience has led me to believe may be of service.

The Act incorporates various provisions of other Statutes. For instance, Parish Council Elections are now regulated mainly by the election provisions of the Town Councils Act, 1900; the audit of Parish Council Accounts is subject to the audit provisions of the Local Government (Scotland) Act, 1889, respecting County Council Accounts; and, again, many of the provisions of the Burgh Police (Scotland) Act, 1892, may be adopted within Special Districts formed under sec. 44 of the 1894 Act. To facilitate reference, these provisions, and others, have been included, with

adaptations where necessary, and such notes as it is thought may prove helpful.

In addition, the more important circulars and instructions of the Board bearing upon the Act have been inserted and so arranged and indexed as to be readily found.

C. C. E.

EDINBURGH, *May*, 1912.

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ABBREVIATIONS AND REFERENCES.

S.C.	= Court of Session Cases.
R.	= Court of Session Cases (Fourth Series), Rettie.
K.B.D.	= King's Bench Division.
Board	= Local Government Board for Scotland. ..
P.L.M.	= Poor Law and Local Government Magazine.
Q.B.	= Queen's Bench.
Co. Co. Cases	= Reports of Cases issued by the Association of County Councils in Scotland.
S.L.T.	= Scots Law Times.
S.J.	= Scottish Jurist.
S.L.R.	= Scottish Law Reporter.
S.L.Rev.	= Scottish Law Review.

LOCAL GOVERNMENT (SCOTLAND) ACT, 1894.

[57 & 58 Vict. Ch. 58.]

An Act to establish a Local Government Board for Scotland,[1] *and make further provision for Local Government in Scotland, and for other purposes.* A.D. 1894.

[25th August 1894.]

1. A Local Government Board was established for England and Wales by the Local Government Board Act, 1871 (34 & 35 Vict. c. 70), and for Ireland by the Local Government Board (Ireland) Act, 1872 (35 & 36 Vict. c. 69).

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title. 52 & 53 Vict. c. 50.

1. This Act may be cited as the Local Government (Scotland) Act, 1894, and this Act, and the Local Government (Scotland) Act, 1889, (herein-after called the principal Act,) shall, except as otherwise provided by this Act, be construed as one Act, and may be cited together as the Local Government (Scotland) Acts.[1]

1. The Local Government (Scotland) Acts, 1889 to 1908, comprise the Local Government (Scotland) Act, 1889; the Local Government (Scotland) Act, 1894; the Local Government (Scotland) Act, 1894, Amendment Act, 1895; and the Local Government (Scotland) Act, 1908. (See sec. 1 of the latter Act.) See also sec. 35 of the Interpretation Act, 1889, as to citation of Acts.

Sec. 2.

2. This Act shall extend to Scotland only.[1]

Extent of Act.

1. The main object of the Act was, as stated in the preamble, to establish a Local Government Board for Scotland and to make provision for the election of Parish Councils. The Act follows in many respects the Local Government Act, 1894 (56 & 57 Vict. c. 73), by which Parish Councils were established in England and Wales.

PART I.—Constitution of a Local Government Board for Scotland.

Establishment of Local Government Board for Scotland.

8 & 9 Vict. c. 83.

3. A Board shall be established, to be called the Local Government Board for Scotland, (in this Act referred to as the Board), and from and after the establishment[1] of such Board, the Board of Supervision, established by the Poor Law (Scotland) Act, 1845, shall cease to exist, and all the powers and duties vested in or imposed on the Board of Supervision by any Act of Parliament in force at the commencement[2] of this Act, shall be vested in, transferred to, and imposed on the Board, and, except as otherwise provided by this Act, shall be exercised and performed by the Board in like manner and subject to the same conditions, liabilities, and incidents respectively, as such powers and duties might before the commencement of this Act have been exercised and performed by the Board of Supervision, or as near thereto as circumstances admit.

1. The establishment of the Board dates from the first appointment of a Vice-President under this Act (sec. 4 (3)), *i.e.*, 26th September, 1894.

2. See sec. 36 of the Interpretation Act, 1889.

Constitution of Board.

4. (1.) The Board shall consist of a President, being the Secretary for Scotland, the Solicitor-General for Scotland, and the Under Secretary for Scotland.

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together with three appointed members,[1] of whom one shall also be appointed Vice-President and Chairman of the Board in the absence of the President, the second shall be a member of the Faculty of Advocates of not less than seven years standing, and the third shall be a registered medical practitioner, who is also registered on the Medical Register as the holder of a diploma in sanitary science, public health, or State medicine, under section twenty-one of the Medical Act, 1886, or has been for a period of not less than five years medical officer of a county or burgh. Such third appointed member shall not hold any other appointment or engage in private practice or employment.[2]

49 & 50 Vict. c. 48.

1. The appointed members at this date (1912) are—
Vice-President—Sir George M'Crae.
Legal Member—Ewan F. Macpherson, B.A., LL.B., advocate.
Medical Member—W. Leslie Mackenzie, M.A., M.D., LL.D., D.P.H.

2. The restriction here would seem to imply that the other two appointed members are not bound to devote their whole time to the duties of their office. In practice, however, the three appointed members give daily attendance and engage in no other occupation.

(2.) The appointed members shall be appointed by Her Majesty, on the recommendation of the Secretary for Scotland, at any time after the passing of this Act, and from time to time as vacancies occur, and shall receive out of moneys provided by Parliament such salaries as the Treasury may assign.[1] They shall hold office during Her Majesty's pleasure.

1. The scales of salary of the appointed members are as follows:—Vice-President, £1200 to £1500; legal and medical members, £1000 to £1200.

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(3.) The Board shall be deemed to be established from and after the date of the first appointment of a Vice-President under this Act.[1]

1. *I.e.*, 26th September, 1894. See note 1 to sec. 3.

Seal, style, acts, orders, and rules of Board.

5.—(1.) The Board shall adopt an official seal, and describe themselves generally by the style and title of the Local Government Board for Scotland, and any act to be done, or deed to be signed, or instrument to be executed, by or on behalf of the Board, may be done or signed or executed in the name of the Board by the President, or by any member of the Board, or by the secretary[1] if such secretary is authorised to do, sign, or execute the same by any general or special order of the Board.

1. The expression "Secretary" includes "Assistant Secretary," sec. 54. The power to appoint a "Secretary" is conferred on His Majesty the King by sec. 4 of the Poor Law (Scotland) Act, 1845. The salary is £700 to £900.

(2.) A rule,[1] order, or regulation made by the Board shall be valid if made under the seal of the Board, and signed by the President or Vice-President or one of the *ex officio* members of the Board, and countersigned by the secretary;[2] and a copy of such rule, order, or regulation, signed and certified by the secretary[2] of the Board, shall be evidence thereof in any court of law or justice.

1. Statutory rules and orders are subject to the requirements of the Rules Publication Act, 1893.

2. Or Assistant Secretary. See note 1 to sub-sec. 1 *supra*.

(3.) It shall be lawful for the Board[1] from time to time to make[2] rules for conducting the business of the

Board, and for exercising the powers and authorities thereof. Sec. 5.

1. Sec. 7 of the Poor Law Act, 1845, which is repealed by this Act (Schedule I.) conferred similar powers on the Board of Supervision.

2. Sec. 32 (3) of the Interpretation Act, 1889, provides that the power to make rules, &c., shall include the power to rescind, revoke, amend, or vary the same.

Transfer of officers.

6.—(1.) The secretary and all officers, inspectors, clerks, and other persons employed at the passing of this Act[1] in or about the execution of the powers and duties of the Board of Supervision, shall, from and after the establishment of the Board,[2] be attached to and be under the control of the Board, and shall in other respects hold their offices and places upon the same terms and conditions, and have the same powers, privileges, and immunities with respect to the performance of their duties, as if this Act had not passed.

1. *I.e.*, 25th August, 1894.

2. *I.e.*, 26th September, 1894. The staff of the Board of Supervision transferred to the Board under this section consisted of—

1 Secretary, £800 to £1000.
4 General Superintendents of Poor, who were also Inspecting Officers under the Public Health Act, £400 to £600.
3 Clerks (first-class), £250 to £400.
4 Clerks (second-class), £180 to £250.
3 Clerks (third-class), £90 to £170.
1 Messenger, £60 to £70.
1 Housekeeper, £22.

17—total staff.

The staff of the Board (1912) now comprises—

1 Secretary, £700 to £900.
1 Assistant Secretary, £500 to £600.

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2 Medical Inspectors, £500 to £800.
1 Engineering Inspector, £700 to £900.
1 Architectural Inspector, £350 to £450.
4 General Superintendents of Poor (who are also Inspecting Officers under the Public Health Act), £400 to £700.
1 Lady Inspector, £200.
5 Staff Clerks, £350 to £500.
5 Minor Staff Clerks, £250 to £350.
24 Second Division Clerks, £70 to £300.
2 Assistant (Abstractors) Clerks, £55 to £150.
5 Female Typists, 20s. to 35s. per week.
4 Messengers, 21s. to 24s. per week.
1 Telephone Operator, 15s. per week.
1 Housekeeper, £52 per annum.

58—total staff.

(2.) The Board may, by order, distribute the business to be performed under the Board amongst the several officers and persons transferred[1] to the Board by this Act, in such manner as the Board may think expedient.

1. See note 2 to sec. 6 (1).

(3.) The Board may, with a view to the proper performance of the duties imposed upon them by this Act, appoint in writing, such medical officers, inspectors, clerks, and other officers, with such salaries to be paid out of moneys to be provided by Parliament, as the Board may, with the sanction of the Treasury, determine.[1]

1. Compare secs. 11 and 14 of the Poor Law Act, 1845; secs. 25 (8) and 39 (2) of this Act; and secs. 8 and 11 of the Public Health Act, 1897. The Board frequently appoint Special Commissioners to conduct inquiries involving profes-

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sional knowledge. Sec. 11 of the Poor Law Act, so far as it requires the consent of the Secretary of State or the Lord Advocate to the appointment and remuneration of Commissioners, is repealed by Schedule I. of this Act. While the Board have power to appoint officials, the sanction of the Treasury is necessary to the number employed and to the salaries they are to receive. The appointments to the clerical staff are made by the Civil Service Commissioners after open competition. Sec. 36 of this Act empowers the Board to appoint Auditors to audit the accounts of Parish Councils.

(4.) All expenses incurred by the Board in the execution of their duties, to such amount as may be sanctioned by the Treasury, shall be paid out of moneys provided by Parliament.

Construction of Acts and deeds, &c.

7. In the construction and for the purposes of any Act of Parliament, contract, or other deed, passed, entered into, or executed, or of any action or proceeding raised, before the establishment of the Board, the name of the Board shall be deemed to be substituted for the Board of Supervision, and any act or thing which might, if this Act had not passed, have been done by the Board of Supervision, may be done by the Board.

After the establishment of the Board, all property belonging to or vested in, or held in trust for, the Board of Supervision shall pass to, and vest in, and be held in trust for, the Board, subject to all debts and liabilities affecting the same, and shall be held by the Board for the purposes for which it is now held, or would have been held if this Act had not passed.

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PART II.—Constitution and Election of Parish Councils.

Establishment of parish councils.

8. A council, in this Act referred to as a parish council, shall be established in every parish.[1]

1. For definition of the word "parish" see sec. 54 and notes 6 and 7 to that section.

Number of parish councillor for each parish.

9.—(1.) The parish council shall consist of a chairman and councillors, and the number of councillors, including the chairman, shall be such (and in the case of a parish partly landward[1] and partly burghal[1] in such proportion[2] for the landward and the burghal parts respectively) as may from time to time, with the approval of the Board, be fixed:—

(*a.*) In the case of landward parishes, not including any part of the area of a police burgh,[1] by the county council;

(*b.*) In the case of burghal parishes, by the town council;

(*c.*) In the case of parishes wholly within a police burgh, by the burgh commissioners;[3] and

(*d.*) In the case of parishes partly landward and partly burghal, or including the area or part of the area of a police burgh or burghs,[1] by the county council and town council or councils or burgh commissioners[3] jointly. In such case, failing agreement, the number shall be such and in such proportion as may be fixed by the Board.

1. For meaning of the terms "landward," "burghal," "burgh," and "police burgh" see sec. 54 and relative notes.

2. The Board's approval is required both to the number of councillors and to the proportion for the burghal and landward portions of the parish.

3. Now "Town Council" (sec. 5 Town Councils Act, 1900).

(2.) In fixing the number of parish councillors, and the proportion for the landward and burghal parts respectively in parishes partly landward and partly burghal, regard shall be had to the powers and duties of the parish council under this Act,[1] and to the population, and special wants and circumstances, of the parish, and to the division of the parish into parish wards,[2] if it is so divided.

1. The powers and duties here referred to are, no doubt, those mentioned in Part IV., secs. 23 to 29 inclusive.

2. See sec. 13.

(3.) The number of parish councillors for any parish shall be not fewer than five nor more than thirty-one.[1]

1. In determining the number of councillors, regard must be had in the first instance to the population of the parish. The number of inhabitants is not the exclusive factor; it will fall to be modified by the other circumstances referred to in sub-sec. 2; but, generally speaking, it may be taken as the common basis on which the determination is to proceed. (Board's Circular, 10th October, 1894.) The scale suggested by the Board as a guide was as follows:—

Population.		No. of Councillors.
Under	3,000	5 to 8
,,	7,000	8 to 11
,,	15,000	11 to 15
,,	30,000	15 to 21
,,	50,000	21 to 25
,,	100,000	25 to 29
Over	100,000	31

There is prepared and issued annually by the Board a Return showing the areas, population, and valuation of counties, burghs, and parishes in Scotland. The popula-

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tion, on the basis of previous Census, is adjusted in accordance with any alteration of boundaries, and the areas are revised up to 31st December of each year. The Return is published by H.M. Stationery Office, price 3½d.

Electing body.

10.—(1.) Subject to the provisions of this Act, a parish council shall be elected by the following persons, in this Act referred to as the parish electors, namely, the persons registered on the parish council register;[1] provided that exemption from or failure to make payment of the special rate authorised by this Act,[2] where such rate is due and payable by persons so registered, shall be a disqualification from voting[3] at an election of a parish council, unless such rate is paid during the period of one year[4] subsequent to service of the demand note requiring payment of the same.

It shall be the duty of the clerk[5] of the parish council, one week before the time fixed for the nomination of candidates for any election of parish councillors in the parish, to prepare a list of parish electors[6] who have failed to make payment[7] of the special rate within such period of one year, and to transmit a copy of such list forthwith to the returning officer; and any votes tendered by any elector named in such list shall at any such election be disallowed, unless the elector verifies, prior to the close of the poll, his right to vote by the production of a receipt duly signed and dated within such period.

1. A person who fails to pay burgh rates (sec. 28, Town Councils Act, 1900) or county consolidated rates (sec. 28 (1), Local Government Act, 1889) is not entitled to be enrolled as a parish elector. *Maclellan* v. *Nish*, 23rd December, 1910; 1911, S.C. 510; 1911, S.L.T. vol. 1, p. 68; 1911, P.L.M. 112.

Free vaccination (sec. 7 of Vaccination Act, 1863); the free use of apparatus for the cleansing of the person (Cleansing of Persons Act, 1897); the provision of temporary or other assistance under the Unemployed Workmen Act, 1905 (sec. 1 (7)); the receipt of an old age pension under the Old Age Pensions Act, 1908 (sec. 1 (4)); and the supply of meals to school children under the proviso to sec. 6 (2) of the Education (Scotland) Act, 1908, involve no disqualification for being registered or for voting as a parochial elector. **Sec. 10 (1).**

2. See sec. 27.

3. Disqualification for *voting* involves disqualification for *signing* a nomination paper (see sec. 17 (3)) and for being nominated. (Board's 4th Report, 1898, p. xxxiii.)

The Board were asked whether a minor whose name was on the Parish Council Register was entitled to vote at an election, and were referred to the opinion expressed in Marwick's "Law and Practice regarding Municipal Elections in Scotland," p. 85, and to the opinion of Mr. Blair in 1901 (Co. Co. Cases, vol. 8, p. 117). These opinions support the contention that a Returning Officer would be justified in excluding a minor from voting although duly registered. The Board, however, while they thought the point a doubtful one, inclined to the view that the Returning Officer was not entitled to refuse the vote of a person duly registered any more than he was justified in refusing the nomination paper of a person obviously disqualified for election. Sec. 5 of the Town Councils Act, 1903, appears to leave no doubt as to the duty of a Returning Officer in the latter case. In the event of the minor or other disqualified person being elected, the only remedy is by way of proceedings either under the Elections (Scotland) Corrupt and Illegal Practices Act, 1890, or by the Parish Council themselves to prove the disqualification, which is due to a legal incapacity, and to have the seat declared vacant. (Board's 4th Report, 1898, p. xxxv., and 13th Report, 1907, p. xxxii.)

While under sec. 5 of the Town Councils Act, 1903, the Returning Officer has no alternative but to accept a nomination paper if it meets the requirements of that section, a Returning Officer would be acting prudently in advising a candidate *as to whose disqualification there could be no doubt* against presenting a nomination paper. (Board's 10th Report, 1904, p. xxxvii.)

Sec. 10 (1). An election having been notified to take place for the purpose of electing three councillors for the Town Council of Earlsferry, six nominations were received. No withdrawals having been intimated, a poll would in due course have been taken, but three of the nomination papers were subsequently found to be defective. The Town Council then resolved that the poll should not be held and that the election should be abandoned. The Sheriff (Armour, at Cupar) found that three nominations were valid and three invalid; that the Returning Officer was not entitled to abandon the election and stop the polling, but that he should either have allowed the polling to proceed in ordinary form, leaving it to any parties having interest to question the validity of the nomination of any of the successful candidates; or, if satisfied that the three nomination papers were invalid, he should have rejected them, and have declared the other three candidates duly elected. (27th November, 1903, 11 S.L.T. 613.) See also the case of Dundee Town Council, referred to in note 3 to sec. 18.

4. The rate referred to is the rate for the year immediately preceding the election, and no disqualification can arise where a year has not elapsed between the service of the demand note and the date of making up the list. The period of one year from the service of the demand note having been completed after the date for making up the list, but prior to the election, the Board held that the list was conclusive, subject to the provision at the end of the above sub-section, and that the Returning Officer had no duty to go beyond that list and inquire whether a disqualification had arisen at a later period. (Board's 4th Report, 1898, p. xxxiii.)

5. Sec. 19 (2) provides that, failing an appointment of a Clerk, the Inspector of Poor of the parish shall act as Clerk.

6. It is only parish *electors* who have failed to make payment of the special rate within the stipulated time that fall to be entered in the list. In practice it is usually found that a Special Parish Rate defaulter is also a Poor Rate defaulter, and his name does not therefore appear on the Parish Council Register, but it is quite conceivable that there may be cases of failure to pay the special rate, although not the poor rate, and the provision in the Act was devised to meet such cases. (Board's 10th Report, 1904, p. xxxviii.)

7. The omission of any reference to exemption from payment in the second paragraph of the section gives rise to the question whether in making up the list of defaulters the Clerk is to include those who have been exempted as well as those who have failed to pay; and, secondly, whether a period of one year requires to elapse to create disqualification. It is thought, however, that both require to be included, and that the list of persons exempted cannot be compiled till after a period of one year from the service of the demand note, for the reason that such persons may be in a position to pay, and may pay, their special rate within the year, in which case there can be no disqualification. **Sec. 10 (1).**

(2.) Each parish elector may at any poll for the election of a parish council give one vote, and no more, for each of any number of candidates not exceeding the number to be elected.[1]

1. Where a parish is not divided into wards there is only one election of councillors for the whole parish. In other cases there is an election for each ward. A person qualified in respect of premises in more than one ward must choose in which he is to exercise the right of voting. He cannot vote in more than one ward. If he does so, he is liable to a penalty not exceeding £50. See sec. 41 of the Town Councils Act, 1900, and note 2 thereto (App. p. 199), as applied to Parish Council elections by sec. 55 of that Act. See also secs. 14 (1) and 15 (1) of this Act, and Petition by Marwick, Town-clerk of Glasgow, 28th November, 1902, 10 S.L.T. 377; 1903 P.L.M. 14; 40 S.L.R. 114.

Likewise, if a person is elected for more than one ward he must choose which ward he desires to serve. A casual vacancy is created in the ward which he decides not to represent, and falls to be filled by the Parish Council in terms of sub-secs. (2) and (4) of sec. 19.

The Board hold that in the case of a parish partly landward and partly within a burgh or police burgh, a candidate whose qualification is in a burghal ward may be nominated for a landward ward, and *vice versa*, and advise that the Returning Officer should be furnished with the Register for the whole parish. Some doubt has been expressed, however, as to whether this is a correct interpretation of the statute so far as relates to the election of a person to the Landward

Sec. 10 (2). Committee who has only a burghal qualification. See Opinion of Counsel (Mr. Asher, K.C., M.P., 11th July, 1896, 8 Co. Co. Cases, 115), and note 3 to sec. 19 (7).

A person having been elected a member of a Parish Council for a burghal ward, and also a member of the Landward Committee for the same parish, which had been increased in terms of sec. 23 (2), the Board indicated that, although the legality was doubtful, unless objection were taken, the person in question should be allowed to remain a member of the Landward Committee as well as a member of the Parish Council, it being understood, of course, that the Landward Committee would not appoint him as one of their representatives to the Parish Council. (Board's 10th Report, 1904, p. xxxviii.)

(3.) A poll[1] for the election of a parish council shall be taken by ballot.

1. The poll must be taken in accordance with the provisions of the Ballot Act, 1872; the Elections (Hours of Poll) Act, 1884; and any Acts extending and amending the same. (See secs. 49 and 55 of Town Councils Act, 1900, App. pp. 202-4.) Sec. 22 of the latter Act provides that a Returning Officer must appoint at least one polling place in each polling district.

The Local Government (Scotland) Act, 1894, Amendment Act, 1895, however, provides "that, where any parish has been divided into wards for the purpose of the election of a Parish Council, it shall not be necessary that the polling place at the first or any other election of parish councillors for any such ward shall be situated within the ward." But the object of this Act was to remove doubts with regard to the construction of sec. 56 (4) of the 1894 Act, which sub-section refers only to landward parishes and the landward parts of parishes. While, therefore, it is clear that in landward areas, excluding police burghs, the polling station need not be within the ward, in burghal areas, including police burghs, the requirement of sec. 22 of the Town Councils Act, 1900, must be observed. County Council Electoral Divisions may be divided into polling districts; see sec. 31 of the Local Government (Scotland) Act, 1889, and the Polling Districts (County Councils) Act, 1908. See also secs. 14 (1) and 15 (1) of the 1894 Act, which provide

for the Parish Council elections being conducted in the *same places* as the County and Town Council elections. Sec. 10 (3).

Where two or more polling places are provided in one parish or ward, separate lists of voters for the respective parts will of course be required.

It will be for the Returning Officer to decide whether there shall be separate ballot boxes for the two elections. It may be convenient to have one ballot box for each Presiding Officer, and the use of different coloured ballot papers would tend to obviate confusion and mistakes.

The counting of the votes must also be carried out in accordance with the provisions of the Ballot Act. If two or more candidates, either in a parish or a ward, receive an equal number of votes, being more than can be elected, the Returning Officer has, and must exercise, a casting vote. (Sec. 18 of this Act and sec. 54 of the Town Councils Act, 1900). He does not require to be a parish elector to give this vote. (Extracts from Board's Circulars regarding conduct of Parish Council Elections.)

Where a scrutiny of votes is demanded, the composition of the Council and the conduct of its business will not be affected during the holding of the inquiry relating to it.

11. A woman[1] otherwise possessing the qualification for being registered on any county council *or municipal*[2] register of electors shall not be disqualified by marriage from being registered on a county council, *municipal*,[2] or parish council register, provided that a husband and wife[3] shall not both be registered in respect of the same property. Married women not disqualified.

1. Prior to the passing of this Act the right of women to vote in County Council elections was confined to unmarried women or married women not living in family with their husbands. (Sec. 28 (2) (1) of the Local Government Act, 1889.) A similar restriction, so far as municipal elections were concerned, was imposed by the Municipal Elections Act, 1881. The former disability is removed by the repeal effected by sec. 55 and Schedule I. of this Act, and the

Sec. 11. latter by sec. 3 and Schedule I. of the Town Councils Act, 1900. The Qualification of Women (County and Town Councils) (Scotland) Act, 1907, provides that "a woman shall not be disqualified by sex or marriage for being elected or being a councillor of any county or burgh in Scotland." Women are now therefore on an equality with men both as to the right to vote at the elections of, and to be members of, County, Town, and Parish Councils. The last-mentioned Act, however, provides that a woman shall not (*a*) "if elected as a councillor, by virtue of holding that office, be eligible for election, or for acting, as a burgh magistrate, or as a judge in any police court, or as a member of a licensing court or court of appeal; or (*b*) if elected as chairman of a county council or provost of a burgh by virtue of holding or having held that office, be a justice of the peace or burgh magistrate, or be eligible for election, or for acting, as a burgh magistrate, or as a judge in any police court." See also sec. 40 of this Act, which precludes women from being eligible for election or for acting as Justices of the Peace in virtue of their holding the office of Chairman of a District Committee or Chairman of a Parish Council.

2. The words in italics are repealed by sec. 3 and Schedule I. of the Town Councils Act, 1900.

3. There is some doubt whether in respect of the wife's property the husband could claim to be registered for Parliamentary purposes and the wife for County, Town, and Parish Council purposes. There seems no good reason, however, why a wife who allows her husband to exercise the vote which she cannot exercise, viz., the Parliamentary vote, should thereby disqualify herself for the exercise of the right to vote in County, Town, and Parish Council elections. If, however, both names appear on the register, some distinctive mark would require to be placed against them to show the purpose for which each is entered, and, unfortunately, there is no express authority for the insertion of such distinctive mark. It may, therefore, be argued that the husband if registered for Parliamentary purposes must as a matter of course remain registered for all other purposes.

In an English case it was held that the occupation by husband and wife of a house belonging to the latter is not necessarily inconsistent with the relation of landlord and tenant subsisting between them. A husband, who, as a matter of fact, is his wife's tenant, may be thereby qualified

to have his name entered on the voters' list as a full inhabitant occupier. *Pearce* v. *Merriman*, K.B.D. (Lord Alverstone, C.J.; Kennedy and Darling, J.J.), 16th November, 1903, 11 S.L.T. 132. Sec. 11.

12. With respect to the registration of parish electors, the following provisions shall have effect:— Registration of parish electors.

(1.) A county council register,[1] exclusive of such portions thereof as relate to police burghs,[2] shall be so framed and printed[3] as that, in addition to the other requirements of the law, the county electors may be distinguished therein according to parish wards,[4] if and where a landward parish, or the landward part of a parish partly landward and partly burghal, is divided into parish wards.

1. The County Council Register becomes the Parish Council Register for all parishes or parts of parishes not included within burghs or police burghs.

2. Police burghs for certain purposes are part of the county, and are directly represented on the County Council, every such burgh being an electoral division of the county, or being divided into two or more electoral divisions. (Sec. 4 (2), Local Government Act, 1889.)

3. The word "printed" would not preclude the register being written by hand if that course were considered more convenient. See note 3 to sec. 17 (2).

4. See sec. 13.

(2.) A municipal register[1] shall be so framed and printed[2] as that, in addition to the other requirements of the law, the municipal electors may be distinguished therein—

(*a*) according to parishes, if and where a burgh or police burgh comprises two or more parishes or parts of two or more parishes;[3] and

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(*b*) according to parish wards (1) if and where a burghal parish or the burghal part of a parish partly landward and party burghal is divided into parish wards; and (2) if and where a landward parish or a part of any parish is co-extensive with a police burgh or part thereof and is divided into parish wards.

1. Sec. 54 defines "municipal register" to include the register of voters for the election in a police burgh of burgh commissioners. A Town Council, however, is now elected for every police burgh. See definitions of "burgh" and "municipal register" in sec. 4, and the provision in sec. 5 of the Town Councils Act, 1900. The Municipal Register is the Parish Council Register for that portion of the parish within the burgh or police burgh. The Parish Council Register in the Glasgow parishes, so far as situate within the city (*i.e.*, Glasgow, Govan, Eastwood, and Cathcart), is compiled subject to the provisions of sec. 12 (1) of the Glasgow Corporation (General Powers) Act, 1896, and the cost of its preparation is a charge upon the poor rate. (Sec. 12 (5) of that Act.) In addition to the parishes mentioned, the city of Glasgow contains portions of the parishes of Paisley and Rutherglen. The provisions of the 1896 Act, do not, however, extend to the two latter parishes. In the Provisional Order now being promoted (January, 1912) for the extension of the boundaries of the city of Glasgow these parishes are included in the expression "Glasgow parishes."

2. See note 3 to sec. 12 (1).

3. For particulars as to burghs comprising two or more parishes and other useful information, see Return referred to in note to sec. 9 (3).

(3.) Where the boundary of a burgh for municipal purposes extends beyond its boundary as ascertained, fixed, or determined for police purposes[1] under the provisions contained in any general or local Act of Parliament, the assessor shall, in preparing the muni-

cipal register, prefix a distinctive mark to the numbers or names of any municipal electors for the area which is without the police but within the municipal boundary, and the names of any such electors shall not be inserted by the town clerk in the copy of the register provided for by this section,[2] and such electors shall not be entitled to vote as parish electors in respect of their qualification as municipal electors, but may vote as parish electors within a county if duly qualified.[3]

1. See sec. 54 as to the boundaries of burghs (*i.e.*, Royal and Parliamentary burghs) for the purposes of this Act.

2. See sub-sec. 8.

3. That is, if entered on the County Council Register applicable to the parish without any disqualifying mark. Sec. 10 (1) and note 1 to that sub-section.

(4.) Nothing in any Act shall prevent a person, if duly qualified, from being registered in more than one parish council register.[1]

1. See note 1 to sec. 10 (2). In a parish partly landward and partly burghal, or partly within a police burgh, the Parish Council Register (sub-sec. 8) consists of two parts. A person registered in both the burghal and landward areas can only vote in one. If, however, he is registered in more than one parish he has a vote in each.

(5.) The assessors or other persons charged with the preparation of the county council and municipal[1] registers respectively shall insert in such registers[2] the names of persons duly qualified as parish electors in more than one parish in respect of each of such qualifications, but shall prefix a distinctive mark[3] indicating where such insertion is for the purposes of the parish council register only.

1. See note 1 to sec. 10 (1), note 3 to sec. 11, and note 3 to sub-sec. 5 *supra*.

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2. See sec. 29 of the Elections (Scotland) Corrupt and Illegal Practices Act, 1890, which requires every assessor or other person charged with the duty of making up a register of voters to omit therefrom, under a penalty, in case of neglect for each offence, of a fine of £100, the name of every person who, though otherwise qualified to be placed thereon, has by reason of conviction of a corrupt or illegal practice become incapable of voting at an election.

3. For Parliamentary purposes a person can have but one vote in the Parliamentary area. He may, however, have several Parish Council votes in that area, hence the necessity for a distinctive mark.

(6.) It shall be lawful to object to the insertion or omission of the distinctive marks[1] in this section mentioned as nearly as may be in the same manner, and subject to the same provisions as to appeal[2] and otherwise, as in the case of any other entry[3] in or omission from such registers.

1. See note 1 to sec. 10 (1), note 3 to sec. 11, and note 3 to sub-sec. 5, *supra*.

2. Under sec. 22 of the Representation of the People (Scotland) Act, 1868, there is an appeal by any person whose name shall have been struck out by the Sheriff of any Parliamentary register or list of voters. In *Wood* v. *Laing*, 19th January, 1897, 24 R. 382; 4 S.L.T. 259, it was held that the Registration Appeal Court had no jurisdiction to entertain an appeal from a judgment of the Sheriff in adjusting the list of voters for a *municipal* election. But that was prior to the passing of the Town Councils Act, 1900. It would appear from sec. 29 of that Act, as applied to County and Parish Council elections by sec. 55, that an appeal in such cases in County, Town, and Parish Council elections was now competent. See *Maclellan* v. *Nish*, 23rd December, 1910, referred to on p. 10.

3. Sec. 2 of the Burgh Voters Registration (Scotland) Act, 1856, as amended by sec. 20 of the Representation of the People (Scotland) Act, 1868, provides that, on or before 15th September, the Assessor must publish copies of the list of persons who may be entitled to vote in the election of a member or members to serve in Parliament by affix-

ing the same on or near the Town Hall, or other conspicuous place within the burgh, and give notice by advertisement in some one or more newspapers circulating in the burgh of the place at which a copy of such list will be open to perusal. A copy must be open to perusal without fee at any time between the hours of ten o'clock forenoon and four o'clock afternoon of every day, except Sunday, from 16th to 21st September, both inclusive. The Assessor must deliver copies of this list to all persons applying for the same on payment of a price for each copy after the rate contained in Table No. 1 of Schedule B annexed to the Act. If any person desires his name not to be entered in the list, and intimates this in writing to the Assessor, the Assessor shall not insert his name; and any one whose name has been omitted from the List of Voters, or desirous of being registered by a different qualification than that for which his name appears in the list, must, on or before 21st September, give notice to the Assessor according to the Form No. 2 in the Schedule to the Act, and the Assessor shall include the names of all such persons claiming in a list according to the Form No. 3 of the Schedule A appended to the Act.

Sec. 8 (6) of the Representation of the People Act, 1884, provides that, in Scotland, all enactments of the Registration Acts relating to the registration of persons entitled to vote in burghs shall, with the necessary variations and with the necessary alterations of notices and other forms, extend and apply to counties.

Errors in the register can only be rectified by the persons concerned giving notice to the Assessor in the manner indicated on or before 21st September.

(7.) An elector to whose number or name as entered in such registers the distinctive mark,[1] as in subsection five of this section mentioned, is prefixed, shall not, in respect of such entry, be deemed to be registered as a parliamentary or county or municipal elector, and shall not be entitled to vote in respect of such entry at a parliamentary or county council or municipal election.

1. See note 1 to sec. 10 (1), note 3 to sec. 11, and note 3 to sec. 12 (5).

Sec. 12.

(8.) From time to time, as soon as a county council or municipal register[1] is completed,[2] the county clerk or town clerk, as the case may be, shall furnish to the clerks[3] of the several parish councils of parishes wholly or partly within the county or burgh or police burgh a certified copy of so much of such register as relates to their respective parishes, and such copy or copies, so far as relating to a parish, shall, subject to the provisions of section ten of this Act, constitute the parish council register[4] for the parish.

1. Sec. 32 of the Town Councils Act, 1900, provides that the Municipal Register shall remain in force from the 31st day of October in each year until the first day of November in the following year. The election (save in certain fishing burghs—sec. 7, Town Councils Act, 1903) takes place on the first Tuesday of November, while nominations have to be lodged by the last Tuesday of October. It would therefore appear that on the respective dates different registers would be in force. The Board advise that the new Register, if available, should be used for the nominations as well as for the elections. (7th Report, 1901, p. xxx.)

2. That is triennially in the case of County Councils and the Glasgow parishes, so far as situate within the city (see note 1 to sec. 12 (2)), and annually in the case of Town Councils.

3. Failing the appointment of a clerk, the copies will be forwarded to the Inspector of Poor. (Sec. 19 (2).)

4. No part of the cost of the preparation of the Parish Council Register is chargeable against the Parish Council. (Board's 5th Report, 1899, p. xxviii.) See also *Maxtone* v. *Provost, Magistrates, and Councillors of Dunoon*, 16th December, 1904, 7 R. 276; 12 S.L.T. 560, where it was held that, under sec. 67 of the Town Councils Act, 1900, a burgh was liable only for the actual outlay of the Assessor in preparing the municipal register of voters, and not for anything by way of remuneration to the Assessor for his personal services. In the Glasgow parishes (see note 1 to sec. 12 (2)) special provision is made by sec. 12 (5) of the Glasgow Corporation (General Powers) Act, 1896, for the cost of the preparation of the register like the cost of the election being charged to the poor rate.

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The certified copy required to be furnished by sec. 12 (8) of the 1894 Act must be provided free, but additional copies required in connection with the election may be charged against the Parish Council.

Rule 29 of Schedule I. of the Ballot Act, 1872, requires the Presiding Officer of each station, as soon as practicable after the poll, to make up into a separate packet "the marked copies of the register of voters and the counterfoils of the ballot papers." In the event of a double contest, the question arises whether this requirement necessitates the Presiding Officer being supplied with two copies of the register, one to be used for the County or Town Council and the other for Parish Council voters. The objection to the use of one register for both elections was that, in the event of a scrutiny in one election, and both sets of ballot papers and the register were placed together, the ballot papers of both elections would be exposed. There is no objection in the Local Government Act, either legal or practical, to the use of only one copy of the register, and the terms of Rule 29 of the Ballot Act can be met equally well by the two sets of counterfoils being each separately sealed and labelled and the three packets being enclosed in one.

Parish wards.

13.—(1.) The landward part and the burghal part of a parish partly landward and partly burghal shall respectively be parish wards,[1] or shall respectively be divided into two or more parish wards, of the parish.

(2.) A police burgh or any part thereof, so far as within a parish, shall be a parish ward,[1] or shall be divided into two or more parish wards, of the parish.

(3.) A county council electoral division (exclusive of any police burgh or part of a police burgh comprised therein), so far as within a parish, shall be a parish ward,[1] or shall be divided into two or more parish wards, of the parish.

1. The statutory parish wards are composed thus—

(*a*) A landward part of a parish, exclusive of a burgh or police burgh;

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(*b*) A part of a parish within a Royal or Parliamentary burgh;

(*c*) A part of a parish within a police burgh; (See sub-secs. 4 and 5.)

(*d*) A part of a parish exclusive of a burgh or police burgh, but within a County Council electoral division.

Any of these statutory parish wards may be subdivided into two or more parish wards. See note 4 to sec. 13 (4) as to the allocation of parish councillors to statutory wards.

The effect of these inflexible provisions has been to create a number of wards with a very small electorate. In some cases their existence as separate electoral areas was not justified, and they were ignored as such, the electors voting for Parish Council purposes in an adjoining ward. While not in conformity with the statute, the Board raised no objection to this course, and in two instances they countenanced the practice by issuing orders under sec. 14 sub-secs (5) and (7) and sec. 15 sub-secs. (5) and (7) providing for one statutory ward being considered for Parish Council election purposes as part of an adjacent ward.

The only remedy for these small wards in landward parishes was to be found in an alteration of boundaries of the County Council electoral divisions, but under sec. 51 of the Local Government Act, 1889, these divisions could not be altered unless there had been a material change of circumstances in respect of the population and annual value since the division was formed or subsequently altered. That difficulty, however, has now been removed by sec. 18 of the Local Government Act, 1908, which repeals the first proviso to sec. 51 of the 1889 Act.

(4.) A county council, on being satisfied[1] after due local inquiry,[2] that within the county, exclusive of any police burgh, different portions of the population of any landward parish, or of any landward part of a parish partly landward and partly burghal, are so situated or have such interests as to make it desirable that they should be separately represented on the parish council, may from time to time resolve and, by order

under their seal,[3] determine that such parish, or landward part of a parish, be divided, subject to the provisions of this section, into such and so many parish wards[4] as they may deem expedient, and shall in such order designate each parish ward, and define its boundaries, and shall thereafter by order assign[4] the number of parish councillors[5] to be elected by the parish electors therein.

1. The duty of determining whether a landward parish or the landward part of a parish partly landward and partly burghal should be divided into wards is laid on the County Council. A Parish Council, having suggested that their parish should be so divided, and having supplied the County Council with reasonable information, including a tracing of the existing and proposed wards, the Board held that they had fulfilled all reasonable requirements, and that the County Council were not entitled to put the Parish Council to the expense of employing a civil engineer or architect to draw out a more elaborate plan. (10th Report, 1904, p. xxxiv.)

2. The expense of any such inquiry falls on the County Council.

3. Any action must be by *Order under seal*. A formal minute is not sufficient.

4. As regards statutory wards, there is no provision as to the body by whom the councillors are to be allocated. The county and burgh authorities proceeded on the assumption that they had power to allocate the representation to the statutory as well as to the optional wards within their jurisdiction, and the Board saw no reason to interfere. (1st Report, 1894-95, p. vi.)

Taking the section literally, it would seem that a re-allocation of councillors could not take place without a re-arrangement of the parish wards. It not infrequently happens, however, that a re-allocation of councillors is desirable without necessarily changing the parish wards, and, although there is no express authority for such a proceeding, it is expedient for efficient administration that such power should be exercised, and it has been so exercised in several instances.

Sec. 13.

(5.)[1] The town council of a burgh or burgh commissioners[2] of a police burgh may, if they think fit,[3] from time to time resolve, and by order under their seal determine that any parish or part of a parish within the burgh or police burgh be divided into such and so many parish wards as they may deem expedient, and shall, in making such division, have due regard to the existing division (if any) of the burgh or police burgh into municipal wards,[4] and shall in such order designate each parish ward and define its boundaries, and shall thereafter by order assign the number of parish councillors to be elected by the parish electors therein.

1. The notes to sec. 13 (4) apply also to this sub-section.

2. The Town Council is now the designation of the body having jurisdiction in burghs and police burghs. (Sec. 5, Town Councils Act, 1900.)

3. Under sub-sec. (4) the County Council must satisfy themselves after due local inquiry that it is desirable to subdivide a parish into wards. The necessity, of course, for a local inquiry in a county is more or less obvious. In burghs it is not so apparent. But regard would no doubt be had, among other things, to the views of the Parish Council.

4. It is desirable that the municipal and parish wards should not intersect. If it is found impracticable to make them uniform, the municipal ward should contain one or more complete parish wards, or *vice versa*, and not parts only of such wards.

55 & 56 Vict. c. 55.

(6.)[1] *Section eleven of the Burgh Police (Scotland) Act, 1892, shall, subject to the exceptions contained in section five* (a) *and in Schedule Two thereof, be construed to include, and shall, notwithstanding any local Act to the contrary, include, the division into wards, and the revision, alteration, extension, or contraction of*

the boundaries of the wards, of a burgh, for parliamentary and municipal as well as for police purposes, and that whether an application has been made for the revision of the boundaries of the burgh or not, provided that any such revision, alteration, extension, or contraction shall not affect the boundaries of any division of such burgh for the purpose of returning a member to serve for such division in Parliament. In this sub-section the expression "burgh" includes police burgh.

1. This section is repealed by sec. 3 and Schedule I. of the Town Councils Act, 1900.

(7.) Any county council or town council or burgh commissioners[1] respectively may by order under their seal in terms of the foregoing sub-sections revoke or modify any previous order, or, within the county or burgh or police burgh, cancel or alter any division of a parish into wards in force at the commencement of this Act,[2] but every such division shall, so far as consistent with the provisions of this Act, remain in force until so cancelled or altered.

1. See note 2 to sec. 13 (5).

2. The Board of Supervision had, under the provisions of the Poor Law Act, 1845, divided forty parishes into wards for election purposes. In order to prevent any difficulty arising out of the existence of these Poor Law wards the Board advised County and Town Councils to consider the advisability of cancelling them under the powers given by this sub-section, which suggestion was carried out in all cases where necessary. (1st Report, 1894-95, p. vii.)

(8.) A copy of every order[1] made under this section shall be transmitted to the Board within fourteen days after it is made.

1. The approval of the Board is not required to the Order. The copy is sent merely for information and record.

Sec. 13.

(9.) In a parish divided into parish wards, the parish councillors[1] for each parish ward shall be separately elected.

1. See proviso to sec. 23 (2) as to election of additional members of a Landward Committee.

Regulations as to election of parish councillors in landward parish, &c.

14. With respect to the second[1] and subsequent elections of parish councillors for a landward parish, or for the landward part of a parish partly landward and partly burghal, the following provisions shall, except within parishes or parts of parishes co-extensive with police burghs[2] or parts of police burghs, have effect:—

1. The provisions regulating the first election are contained in sec. 56.

2. The Parish Council election in police burghs takes place along with the Town Council election, subject to the provisions of sec. 15.

(1.) The election of such parish councillors shall take place in every third year, beginning with the year one thousand eight hundred and ninety-eight, on the same day and, as nearly as may be, in the same manner, in the same places, and with the same returning[1] and presiding officers[2] and clerks, as the election of county councillors[3] for the county in which such parish or part of a parish, as the case may be, is situated, or if there is a contested election for parish councillors, but there is no contested election for county councillors in the county council electoral division or divisions corresponding to such parish or part of a parish, as the case may be, as if there were a contested election for county councillors in such electoral division or divisions.

Sec. 14.

1. The Returning Officer is appointed by the County Council at their meeting in the month of October preceding the election. He may appoint a deputy, and any fit person to act as Presiding Officer, although not possessing any professional status or qualification. (Sec. 30 (2), Local Government Act, 1889.)

2. The Clerk of the Parish Council or the Inspector of Poor may, if appointed, competently act as Presiding Officer. The Returning Officer and Deputy Returning Officer may also act as Presiding Officer; but if they do so, they are not entitled to a fee. See *Ivory* v. *Macrae*, 21st November, 1895, 23 R. 155; 3 S.L.T. 172; 3 Co. Co. Cases, 49. The Board do not favour the practice of a Returning Officer acting as a Presiding Officer, especially where there is more than one polling station, as he is responsible for the whole election proceedings, and circumstances may arise in which he may be unable to supervise the election if engaged as a Presiding Officer. (Board's 13th Report, 1907, p. xxxii.)

3. County, Town, and Parish Council elections all take place under similar conditions, differing only in minor points of detail which the circumstances of each election render necessary, and which are provided for in the Acts of Parliament applicable to each. Thus the County Council elections are conducted in like manner as an election of town councillors, but are subject more especially to the provisions of secs. 30 to 36 of the Local Government Act of 1889. The law relating to the election of town councillors has been amended and consolidated by the Town Councils Act, 1900, the more important provisions of which (secs. 41 to 55) dealing with elections have been printed for reference in the Appendix (pp. 199-204), notes being added explanatory of the application of the provisions to Parish Council elections. The latter elections follow, as far as possible, the procedure laid down for County and Town Council elections according as to whether the parish is landward or is contained wholly or partly within a burgh or police burgh. In police burghs, as in Royal and Parliamentary burghs, the Parish Council election is conducted along with the election of town councillors, and the Town Councils Act, 1900, is by sec. 55 of that Act deemed to be an enactment regulating the election of town councillors referred to in the Local Government Acts of 1889 and 1894. The main object of combining the elections was to secure economy, the votes being recorded

Sec. 14. for both elections at the same time and place, with one set of polling arrangements and one set of officials.

(2.) The expenditure incurred[1] in the election of such parish councillors as ascertained and apportioned by agreement between the county council and the parish council or councils concerned, or, failing agreement, by order of the Board,[2] shall be a charge upon the poor rate levied in such parish, and shall be paid to the county council by such parish council or councils.[3]

1. In County Council elections all expenses properly incurred by the Returning Officer must not exceed those allowed by such scale as the County Council may from time to time frame subject to the approval of the Secretary for Scotland. (Sec. 30 (6) of the Local Government Act, 1889.) As the Parish Council elections take place along with, and as nearly as may be in the same manner as, the County Council elections, the approval of the Secretary for Scotland seems also to be required to a scale for the Parish Council elections. Prior to each election it is the practice of County Councils to submit scales for approval for both elections, and therefore references to the Board under this sub-section seldom occur. The approval of a scale by the Secretary for Scotland, however, does not necessarily preclude the Board from undertaking such references, neither does the Secretary for Scotland's approval to a scale debar the Board in supplementary Parish Council elections conducted alone from making full investigation, determining what are proper charges, and disallowing expenditure which in their opinion has been unnecessarily incurred. The scales submitted to the Secretary for Scotland for the combined general elections are, as a rule, approved by him subject to the condition that they are not to apply to supplementary Parish Council elections, but the Board raise no objection to these scales being followed for supplementary elections, provided they are applied in a reasonable and moderate manner. The scales, of course, are not applicable in every particular to supplementary elections. Certain outlays, *e.g.*, the employment of a Deputy Returning Officer, may be necessary in

a general election that are superfluous in a supplementary election. Sec. 14.

It has been contended that an appeal under sec. 14 (2) is given in those cases only in which the expenditure requires to be *apportioned*, that is, where the County Council and Parish Council elections take place together. The Board were advised, however, that the words *ascertained* and *apportioned* were not indissolubly linked together, but must be taken as separate operations, and made applicable one or both according to circumstances. When there are two elections, both are applicable. When there is only one, ascertainment is applicable, apportionment is not. The Board may therefore be called upon to *ascertain* expenditure which has not been apportioned by agreement.

The Board, in the exercise of their powers under the audit provisions of the Act, have held payments for making up the roll of voters and charges for refreshments for officials at the Parish Council election to be contrary to law. (See App. p. 327.) They have further refused to pass on appeals under sec. 14 (2) charges for halls in which to conduct the elections where public schools were available. (5th Report, 1899, p. xxviii.; 8th Report, 1902, p. xxvi.)

Returns of the costs of the first and second elections of Parish Councils were prepared and issued as Parliamentary Papers. (See House of Commons Returns, Nos. 373, Session 1895, and 145, Session 1900.)

2. It is important to notice that the Board are not called on to interfere unless there has been a failure between the County Council and Parish Council to agree. References have sometimes been submitted as between *officials* of the County Council and the Parish Council, and the Board declined to consider the matter until it had been dealt with by the County and Parish Councils.

Taxation of an account made up as between agent and client (a not uncommon form with burgh officials) will not supersede a reference under this sub-section. Indeed, seeing the statute provides a method of determining such questions, the legality of charging the fee for taxation to the rates is doubtful.

3. The out-going Parish Councils have no duty to deal with the question of election expenses, that being a matter for their successors.

Sec. 14.

(3.) From and after such second election, the term of office of such parish councillors shall be three years,[1] and in every third year the whole number of such parish councillors shall go out of office, and their places shall be filled by election.

1. A parish councillor is elected for three years, and is not disqualified by removal within that period from the parish, even should he cease to be an elector, unless he happens to come under one or other of the statutory disqualifications. In landward areas he will, of course, be an elector for three years, the register being in force for that period. In burghal areas, however, he may cease to be an elector prior to the expiration of his term of office, the register being made up annually. See note 2 to sec. 12 (8).

(4.) The enactments regulating the election of county councillors[1] shall, with the necessary variations and subject to the provisions of this Act, extend and apply to the election of such parish councillors.

1. See note 3 to sec. 14 (1).

(5.) If in any case such parish, or part of a parish, is situated in more counties than one,[1] the provisions of this section shall apply with the necessary variations and subject to such regulations as may be made by any order of the Board,[2] and such regulations shall have effect as if they were contained in this Act.

1. For list of such parishes, see the return referred to in note to sec. 9 (3).

2. The Board have not hitherto found it necessary to make any regulations under this section. It has, however, happened that small parish wards have been created by the extension of the boundaries of burghs embracing parts of an adjoining county, and the Board, in pursuance of their powers under this sub-section, have issued orders providing for the election of parish councillors in such wards being conducted as if they still formed part of the ward to which they formerly belonged.

Sec. 14.

(6.) It shall be the duty of the county council of every county to make due provision for the election of such parish councillors.

(7.) A county council may refer to the Board any question that may arise as to the performance of the duty[1] of such county council under this section, and the determination of the Board, as signified by order thereon, shall be final.

1. The Board, no doubt, have wide powers under this sub-section. It will be observed, however, that they are only authorised to determine questions as to the *performance of the duty* of the County Council. They cannot set aside statutory requirements or relieve Returning Officers of the responsibility of determining as to the procedure to be followed in all cases presenting difficulty. The Board have frequently been asked to exercise authority under this sub-section, but in comparatively few cases have the circumstances been such that the Board felt warranted in dealing with them. For instances in which the Board exercised their powers under this section, see note 1 to sec. 13 (3) and note 3 to sec. 18.

Regulations as to election of parish councillors in burghal parish, &c.

15. With respect to the second and subsequent elections of parish councillors for a burghal parish, or for the burghal part of a parish partly landward and partly burghal,[1] the following provisions shall have effect:—

1. This section applies to parishes containing burghs and police burghs. See clause at end of section. See also notes to sec. 14.

(1.)[1] The election of such parish councillors shall take place in every third year, beginning with the year one thousand eight hundred and ninety-eight, on the same day[2] and, as nearly as may be, in the same manner, in the same places, and with the same returning[2]

Sec. 15, and presiding officers and clerks, as the election of town councillors for such burgh,[3] or if there is a contested election for parish councillors, but there is no contested election for town councillors in such burgh or in any ward thereof (if it is divided into wards), as if there were a contested election for town councillors in such burgh, or in a ward or wards thereof.

1. See notes to sec. 14 (1).

2. In the "Glasgow parishes" (see note 1 to sec. 12 (2)) it is expressly provided by sec. 12 (2) of the Glasgow Corporation (General Powers) Act, 1896, that the Returning Officer shall be appointed by the respective Parish Councils, and that the election of parish councillors shall be separate and distinct from the election of town councillors, and shall be held on a day to be fixed by the Board.

3. Town Council elections take place on the first Tuesday of November, save in those fishing burghs where the date of election has been altered by the Secretary for Scotland in response to a petition under sec. 7 of the Town Councils Act, 1903. The Parish Council elections in such burghs take place along with the election of town councillors, the Board issuing such orders as may be necessary to give effect to the provisions of this Act.

(2.)[1] The expenditure incurred in the election of such parish councillors, as ascertained and apportioned by agreement between the town council and the parish council or councils concerned, or, failing agreement, by order of the Board, shall be a charge upon the poor rate levied in such parish, and shall be paid to the town council by such parish council or councils.

1. See notes to sec. 14 (2). The Board have issued a Scale of Fees as a guide for Town and Parish Councils in fixing the remuneration to be paid to the Town-clerk in respect of his services in connection with the election of parish councillors. See Appendix, p. 217. The scale is issued merely as a recommendation, and without prejudice to any reference that may be made to the Board under this sub-section.

(3.)[1] From and after such second election the term of office of such parish councillors shall be three years, and in every third year the whole number[2] of such parish councillors shall go out of office, and their places shall be filled by election: provided that the term of office of parish councillors elected for such burghal part[3] of a parish shall not commence until the first Tuesday of December following their election.

1. See notes to sec. 14 (3).

2. In Town Councils one-third of the councillors, in the case of a burgh not divided into wards, and one-third of the councillors for each ward in the case of a burgh divided into wards, retire annually from office. (Sec. 34 of Town Councils Act, 1900.)

3. In parishes partly landward and partly burghal the term of office of all councillors, irrespective of their date of election, does not commence till the first Tuesday of December. In burghal parishes, however (*i.e.*, parishes contained wholly within a burgh or police burgh), the councillors take office apparently on the day of their election (first Tuesday of November), and the question arises as to the manner in which the business of the Parish Council is to be conducted between the date of election and the date of the statutory meeting which, in terms of sec. 19 (6), falls to be held within ten days of the first Tuesday of December. There is no reason, however, why the Parish Council should not hold their meetings as usual during this period. They may proceed to elect a chairman as soon as possible after their election in terms of sec. 19 (5), who will be provisional in the sense that he will not hold office beyond the statutory meeting. Committees may be appointed in like manner, but they too will hold office provisionally, and will fall to be re-appointed at the statutory meeting in accordance with sec. 33.

(4.) The enactments regulating the election of town councillors[1] shall, with the necessary variations and subject to the provisions of this Act, extend and apply to the election of such parish councillors.

1. See note 3 to sec. 14 (1).

Sec. 15.

(5.) If in any case the burghal part of a parish is situated in more burghs than one,[1] the provisions of this section shall apply with the necessary variations, and subject to such regulations as may be made by any order of the Board, and such regulations shall have effect as if they were contained in this Act.

1. See note to sec. 14 (5).

(6.) It shall be the duty of the town council[1] of every burgh to make due provision for the election of such parish councillors.

1. In the "Glasgow parishes" this duty is transferred to the respective Parish Councils. (See sec. 12 (3) of the Glasgow Corporation (General Powers) Act, 1896.)

(7.) A town council[1] may refer to the Board any question that may arise as to the performance of the duty of such town council under this section, and the determination of the Board, as signified by order thereon, shall be final.

1. See note to sec. 14 (7). The Glasgow Corporation (General Powers) Act, 1896, authorises the Parish Councils of the "Glasgow parishes" to make a similar reference.

The foregoing provisions shall apply to the second and subsequent elections of parish councillors in parishes or parts of parishes co-extensive with police burghs or parts thereof, with the omission of the words "burghal," and with the substitution of the expression "police burgh" for "burgh," *and "burgh commissioners" for "town council" or "town councillors."*[1]

1. The words in italics are repealed by sec. 3 and Schedule I. of the Town Councils Act, 1900.

Sec. 16.

Notice of election and nomination papers, &c.

16. The enactments by the principal Act[1] or this Act applied to the election in a county[2] of county councillors and in a county[2] (except within parishes or parts of parishes co-extensive with police burghs or parts of police burghs) of parish councillors, shall, for the purposes of such election, be construed or amended so as to incorporate the following provisions, which are hereby enacted, that is to say:—

1. *I.e.*, the Local Government Act, 1889.

2. This section applies only to parishes and parts of parishes not within burghs and police burghs.

(1.) The notice[1] of election shall be given by the returning officer not later than four o'clock afternoon on the *fourth*[2] Tuesday preceding the day of election, and the nomination papers[1] shall be lodged with the returning officer at any time not later than four o'clock afternoon on the *third*[2] Tuesday preceding the day of election; and sub-section four of section thirty of the principal Act is hereby repealed. Every nomination paper shall be signed by the candidate nominated or by some person duly authorised[3] in that behalf.

1. See sec. 17 (4) and Schedule II. of this Act.

The statute requires that the arrangements to be made by the Returning Officer shall be *published*. The time and mode of publication are not prescribed; but such publication should be provided for as will ensure timely publicity throughout the parish. This will in most cases be secured by intimation of the arrangements being included in the "Notice of Election" required by sec. 16 (1), which, in accordance with sec. 9 (1) of the Local Government (Scotland) Act, 1908, is to be given not later than 4 p.m. *on the fourth Tuesday preceding the day of election.*

The notices of election for the County Council and Parish Council elections respectively may be separate or combined in one intimation. If the Returning Officer thinks fit,

[Sec. 16. there seems to be no objection to the notice of the Parish Council election being appended to or combined with that of the County Council election. (Extracts from Board's Circulars.)

The various forms suggested by the Board for use at an election of parish councillors are printed in the Appendix, pp. 205-216.

2. The words in italics were substituted respectively for the words "third" and "second" in the Act, as originally framed, by sec. 9 (1) of the Local Government Act, 1908.

3. It is advisable that the person "duly authorised" to sign a nomination paper should submit evidence of his authority, and that such authority should be lodged along with the nomination paper. The Board advise that the Returning Officer should be furnished with a statement in writing to the effect that the signatory has authority to act. See note 2 to sec. 17 (1).

A person may, however, be duly authorised who has only verbal authority. (Opinion of counsel, Mr. P. J. Blair, 20th November, 1901, 8 Co. Co. Cases, 117.) See also *Rutherford* v. *Lockie*, 13th November, 1880, 8 R. 6, in which it was held that a claim to be entered in the list of voters for the election of a member of Parliament may be signed for a claimant by his agent, and that no written mandate is required, provided there be sufficient proof *aliunde* that the agent has the requisite authority.

(2.) It shall not be necessary to publish[1] the names of candidates for a parish council elsewhere than in the parish, but the returning officer may, if he think it expedient, publish them in any manner in which he publishes the names of candidates for the county council.

1. The publication is subject to the provisions of secs. 42 and 46 of the Town Councils Act, 1900, so far as applicable, that is to say, the Returning Officer shall, not later than the Friday preceding the day of election, give intimation by notice to be affixed to the outside wall of the county buildings, or of any premises where the meetings of the County Council are ordinarily held, and also by handbills posted up throughout the county, or by insertion at least once in some

newspaper or newspapers published within the county, if any be, or otherwise in some newspaper or newspapers circulating in the county. See notes to sec. 42 of Town Councils Act, 1900, on p. 200, and forms of notice on pp. 215-16.

As no nomination can be received after 4 p.m. on the third Tuesday preceding the day of election, the names of the candidates should be made public as shortly as possible thereafter. Where the number of candidates nominated is in excess of the number of councillors to be elected, such early intimation would enable arrangements to be made, if desired, for the withdrawal of candidates (the last day for withdrawals is the second Tuesday preceding the day of election), so as to avoid the expense of a contested election. Where the number of candidates nominated does not exceed the number of councillors to be elected, there is no reason why the list should not be made public immediately after the last day for receiving nominations, as in that case there can be no contest, and the election is virtually concluded. But, in any case (even though there should be no contest), statutory publication must be made. (Extracts from Board's Circulars.)

(3.) Any intimation made to a returning officer of the nomination of a candidate for election shall be competently withdrawn by giving notice[1] of withdrawal to the returning officer not later than four o'clock afternoon on the *second*[2] Tuesday preceding the day of election, and such notice of withdrawal shall be signed by the person nominated or by some person duly authorised[3] in that behalf, provided that no such withdrawal shall be competent when its effect would be to reduce the total number of persons nominated for such election in a county electoral division or parish or parish ward below the number necessary to supply the vacancies to be filled, and provided also that such notices shall take effect in the order in which they are delivered.[4]

1. See sec. 17 (4) and Schedule III. of this Act.

Sec. 16.

2. The word "second" was inserted by sec. 9 (1) of the Local Government Act, 1908. The section previously read "the Tuesday immediately preceding the day of election," &c.

3. See note 3 to sub-sec. 1.

4. The notices of withdrawal should be numbered consecutively in order of receipt, and the precise time of delivery marked on each.

Powers and duties of returning officer.

17.—(1.) A returning officer shall make and publish such arrangements[1] as he shall think fit for the purpose of enabling nomination papers[2] for the election of parish councillors, and notices of withdrawal,[3] to be obtained, and when filled up to be received and dealt with, at some place within or adjoining the parish,[4] and for that purpose may, by writing under his hand, delegate[5] such of his powers as he shall think necessary to the clerk of the parish council of the parish or other fit person.[6]

1. See note 1 to sec. 16 (1).

In municipal elections the duty of publishing the notice of election, of issuing and receiving the nomination papers and notices of withdrawal, and of publishing the list of persons nominated is laid on the *Town Clerk*. This section provides that in Parish Council elections the *Returning Officer* shall take charge of the arrangements under which nomination papers and notices of withdrawal are to be obtained, received, and dealt with, but it makes no specific provision as to the person by whom the notice of election is to be issued.

It appears to the Board to be of the utmost importance that all these arrangements should be carried out by one individual, and they strongly recommend that in burghs and police burghs the Returning Officer should delegate to the Town Clerk all his powers and duties in connection with issuing and receiving nomination papers and notices of withdrawal. (Extracts from Board's Circulars.)

2. The Board in their circulars point out that the nomination papers when filled up are to be lodged with the

Returning Officer, or (where a delegate is appointed) with his delegate. When a delegate is appointed, the nomination papers *must* be lodged with the delegate, and *not with the Returning Officer*. In such cases, however, care should be taken to see that the correct name and address of the delegate are inserted on the nomination paper.

If a delegate is authorised to "deal with" nomination papers, the provisions of the statute should be clearly explained to him. A nomination paper should be in the form given in Schedule II. of the Act, and must be signed by two parish electors entitled to vote for the candidate nominated. It must contain—

(1) The Christian name or names and surname and place of abode of the candidate, all as set forth in the register of voters. The candidate must be a parish elector; but, in a parish divided into wards, it is not imperative that he should be an elector in the ward for which he is nominated.

(2) The names and places of abode of the two electors who sign, all as set forth in the register of voters. In a parish divided into wards, the two electors must be electors within the ward to which the nomination applies.

(3) The nomination paper must be signed by the two electors and by the candidate, or by some person duly authorised by him in that behalf. Authority to sign should be given in writing, and the writing should be lodged along with the nomination paper. (See, however, note 3 to sec. 16 (1).)

3. The preceding note as to nomination papers applies to notices of withdrawal. See also note 4 to sec. 16 (3).

4. In burghs and police burghs the office of the Town-clerk, or other place where municipal nominations are received, will be the appropriate place. In parishes not within burghs and police burghs the Board in their circular state that it would be unreasonable to hold that the place fixed on must be *contiguous* to the parish. A suitable place, conveniently situated for the majority of the electors, either within or without the parish, may be selected. The Returning Officer will exercise his discretion in each case—regard being always had to the general convenience of the electors.

Sec. 17.

When the Clerk of the Parish Council is appointed delegate, it is probable that the office of the Parish Council, or (where there is no office) his own residence, will be found to be a suitable and convenient place.

5. See note 2. If the Returning Officer delegates his powers under this sub-section he deprives himself of the right of exercising such powers.

6. The usual practice in landward parishes is for the Returning Officer to appoint as his delegate the Clerk to the Parish Council or the Inspector of Poor.

On 5th March, 1902, the Board issued the following minute relative to the interference by Inspectors of Poor in the elections of parish councillors:—

"The Board are impressed with the importance of the principle that their Inspectors of Poor should avoid all interference, direct or indirect, in favour of or in opposition to particular candidates at elections to the Parish Councils, and accordingly direct that this minute should be circulated to all concerned."

(2.) The returning officer or officers, as the case may be, shall after an election[1] give intimation[2] in writing[3] forthwith to the clerk of the parish council[4] of the persons elected as parish councillors,[5] and the said clerk shall in each year, by notice in writing to each parish councillor, summon the statutory meeting[6] of the parish council. The notice shall state the hour and place of meeting.

1. Compare sec. 52 of the Town Councils Act, 1900 (App. p. 203). There is no provision either in the Local Government Act of 1889 or 1894 as to the manner and time of the declaration of the result of County Council or Parish Council elections. In most cases the Returning Officer will find it convenient to intimate the result of a Parish Council election along with the County and Town Council elections. He has no duty to administer the oath *de fideli administratione officii* to newly-elected parish councillors, nor to inquire whether they accept office. The procedure thus differs from County and Town Council elections, acceptance of office being essential in these cases. See sec. 30 (7) of the Local

Government Act, 1889, and sec. 53 of the Town Councils Act, 1900. **Sec. 17.**

2. In the case of a person who was the only candidate, and who had been duly nominated at a supplementary Parish Council election, the Board held it to be doubtful whether he could vote at a meeting of the Parish Council before he had been formally declared elected.

3. The Interpretation Act, 1889, sec. 20, defines the expression "writing" to include printing, lithography, photography, and other modes of representing or reproducing words in a visible form, unless the contrary intention appears. Compare note 3 to sec. 12 (1).

4. Or the Inspector of Poor. (Sec. 19 (2).) If there is a Landward Committee in the parish, it will be the duty of the Clerk to the Parish Council to intimate to the Clerk to that Committee the names and addresses of the persons elected for the landward part of the parish.

5. The return of expenses and relative declaration required by sec. 25 (3) of the Elections (Scotland) (Corrupt and Illegal Practices) Act, 1890, must be made by every candidate at a Parish Council election. The statutory form of declaration in Schedule II. of the Act requires to be slightly altered in cases where no expenses have been incurred. A copy of the form, recommended by the Board as suitable for use, will be found on p. 219. The declaration must be made before a Justice of the Peace, and must be forwarded within twenty-eight days after the election to the prescribed officer, as set forth in Rule 18 made by the Court in terms of sec. 47 (1) of the Act, which, as amended by the Act of Sederunt of July, 1898, provides—

"The returns and declarations mentioned in sec. 25 of the Act shall be sent, in the case of County Council elections and of Parish Council elections for a landward parish, or for the landward part of a parish partly landward and partly burghal, to the County Clerk of the county within which such elections are held; in the case of municipal elections and of Parish Council elections for a burghal parish, or for the burghal part of a parish partly landward and partly burghal, or for parishes or parts of parishes co-extensive with police burghs or parts thereof, to the Clerk of the burgh within which such elections are held; and in the case of School Board elections, to the Clerk of the School Board."

It is no part of the duty of a Parish Council to interfere

Sec. 17. where a member has failed to make a return of his election expenses. If such councillor acts or votes he does so at his own risk, and until it has been found in a Court of law that an offence has been committed against the Act the Parish Council are not entitled to assume that the member in question has come under any disability, or that his office is vacant.

6. The statutory meeting (see sec. 19 (6)) falls to be held on any lawful day within ten days after the first Tuesday of December, save in the parishes containing "fishing" burghs, for which special provision is made—see sec. 7, Town Councils Act, 1903. If no election has taken place, or if the number elected is less than a quorum of the Parish Council (which is one-fourth of the Council, but in no case less than three (sec. 19 (3)), it will be unnecessary to issue notices, as no meeting can be held. If a sufficient number to form a quorum, but less than the full number of the Council, has been elected, the meeting must be called and business may be proceeded with.

It will be the duty of the Clerk to the Landward Committee to call the statutory meeting of that Commitee, which falls to be held within the same period, and might with advantage be held on the same day as the statutory meeting of the Parish Council. Where the Landward Committee has been enlarged in terms of sec. 23 (2) (*b*) the meeting must be held, and the selection of parish councillors for the landward part of the parish must be made prior to the statutory meeting of the Parish Council. The representatives of an increased Landward Committee on the Parish Council retain their seats for the full period of three years, so long, of course, as they remain members of the Landward Committee. It is not necessary to renew the appointments annually.

(3.) A nomination paper shall be competently signed[1] by any two parish electors entitled to vote for the candidate nominated.

1. See note 3 to sec. 10 (1) and note 1 to sec. 10 (2). In County Council elections only two electors are required to sign (sec. 30 (3) of the Local Government Act, 1889), but in Town Council elections, in addition to the two electors who sign, at least five other electors are required to subscribe to a form of assent. (Sec. 44 and Schedule IV. of Town Councils Act, 1900.)

(4.) The intimation of nomination, and notice of withdrawal respectively, may be in the form of the Second and Third Schedules to this Act annexed.[1]

1. See notes to these schedules.

Supplemental provision as to elections.

18. If a parish council[1] are not elected at the time at which they ought to be elected, or if an insufficient number of councillors is elected, or if a parish council[1] become unable to act by reason of deficiency in the number of councillors, whether from failure to elect or otherwise, the Board may order, at such time and in such manner as seems expedient,[2] a new election[3] of a councillor or councillors for the parish or for a ward or wards thereof, and shall by order make such provision as seems expedient for authorising any person to act temporarily[4] in the place of the parish council.[1] If two or more candidates receive an equal number of votes, being more than can be elected, the returning officer shall have the casting vote.[5]

1. It is not clear whether the words "Parish Council" include a Landward Committee under sec. 23 (2). An increased Landward Committee, however, is "subject to the same provisions as the election of parish councillors," and the Board have proceeded on the assumption that they had power to deal with increased Landward Committees as well as Parish Councils under this section.

2. The power here given to the Board is fairly comprehensive, and might be interpreted as authorising them, if necessary, setting aside many of the details of ordinary election procedure, such as the usual periods of notice required of an election, and the time for lodging nomination papers and notices of withdrawal.

3. Provision is made for the following contingencies:—

(*a*) Where the Parish Council is not elected at the proper time. An election may be void *ab initio*, *e.g.*, held on the wrong day, in which event the

Sec. 18.

Board would have to order a new election for the whole number of members.

(*b*) Where the full number of members has not been elected.

(*c*) Where a Parish Council become unable to act, *e.g.*, the number of councillors may be reduced below a quorum through deaths or resignations.

In either of the cases mentioned under (*b*) or (*c*) the Board will issue an order for an election to complete the statutory number.

The new election referred to means a new election by the ratepayers. The vacancies caused by contingencies (*b*) and (*c*) are not casual vacancies that can be filled by the Parish Council in terms of sec. 19 (4). Unfortunately, the provisions of sec. 36 of the Town Councils Act, 1900, under which vacancies in Town Councils arising from the causes specified may be filled up by the Town Council, do not apply to County and Parish Councils. Many of the deficiencies in the numbers nominated at the general Parish Council elections are due to technical defects in the nomination papers, and the trouble and expense of a fresh election seem hardly warranted in such circumstances.

There is an opinion of counsel (Alexander Asher, Q.C., M.P.), to the effect that a vacancy in a County Council caused by the election of a disqualified person falls to be filled by a new election and not as a casual vacancy. (8 Co. Co. Cases (11th July, 1896), 114.) The same reasoning applies to a similar vacancy in a Parish Council. In Town Councils it is quite clear that in the event of a disqualified person being elected he remains a councillor, and may take part in the business of the Council until such time as he voluntarily resigns or until his seat is declared vacant. (Sec. 14, Town Councils Act, 1900.) Having regard to the fact that the Returning Officer has no option but to return a disqualified person as a duly elected councillor if his nomination paper is in order, and looking to the terms of sec. 19 (4) of the Local Government Act, 1894, which specifically mentions "disqualification" as involving a casual vacancy, there seems room to doubt the soundness of the opinion referred to. Moreover, it was given prior to the passing of the Town Councils Act, 1903 (sec. 47), although the reasoning on which it proceeds does not seem to be affected by that section. On the other hand, the words of sec. 20 of this Act, "a

person shall be disqualified *for being elected*," certainly, if taken alone, lend colour to the view that there can be no valid election of a person disqualified under that section, and that therefore, in such circumstances, there is an insufficiency in the number of councillors elected. Reference may also be made to the case of *Brown* v. *Gibson*, 23rd December, 1909, 26 S.L.Rev. 65; 17 Co. Co. Cases, 70. **Sec. 18.**

The death of a candidate after the nomination day, but before the day of election, even in the case of an uncontested election, has been held by the Board to require a new election to fill the vacancy thus created.

In a contested election the death of a candidate between the nomination day and day of election has given rise to the question whether the provisions of sec. 1 of the Ballot Act apply to a Parish Council election. That section enacts that in Parliamentary elections, "if one of the candidates nominated shall die before the poll has commenced, the Returning Officer shall, upon being satisfied of the fact of such death, countermand notice of the poll, and all the proceedings with reference to the election shall be commenced afresh." The Board (p. xlii. of their 16th Report, 1910) stated that there was some reason to doubt its application to other than Parliamentary elections, and met the difficulty in the case that came before them by the issue of an order under sec. 14 (7) of this Act, authorising the Returning Officer to proceed with the election (there being still more candidates than seats to fill) on the appointed day in the same manner as he would have proceeded if such deceased person had not been nominated. It would appear, however, to have been held in England that sec. 1 of the Ballot Act applied to a County Council election. See *Westacott* v. *Stewart*, 2nd March, 1898, 1 Q.B. 552; 5 Co. Co. Cases, 32. The point has arisen indirectly in Dundee. In a contested election for two vacancies in a ward of Dundee Town Council one of three candidates died on the morning of, and before the commencement of, the poll. The Returning Officer received intimation of the death after the opening of the poll, and then stopped the polling. The opinion of Lord Johnston seems clearly to have been that, had the Returning Officer received intimation of the death prior to the commencement of the poll, the subsequent procedure would have been regulated by sec. 1 of the Ballot Act, 1872. In the circumstances, however, he held that the

Sec. 18.

Returning Officer had no power to stop the poll then proceeding, and to declare the remaining two candidates duly elected as town councillors. *Urquhart* v. *Ayr*, 20th Nov. 1909; 1910, S.C. 54; 47 S.L.R. 56; 2 S.L.T. (1909) 360; 16 Co. Co. Cases, 5.

4. Presumably the power to appoint a person to act temporarily in place of the Parish Council is limited to the time during which the Council is incapacitated, although this is not expressly stated. It is not easy to conceive of any reason for superseding the Parish Council except where it is unable to act.

5. See note 1 to sec. 10 (3).

Office of parish councillor and regulations regarding parish council.

19.—(1.) A parish council shall be elected from among the parish electors.[1]

1. That is, the persons registered on the Parish Council register. See sec. 10 (1) and relative notes.

(2.) A parish council[1] may, subject to the provisions of this Act, from time to time make, vary, and revoke such regulations[2] as they think fit with respect to the summoning notice, time, place, and management of their meetings,[3] or of the meetings of any committee of the council, and generally with respect to the conduct of their business: provided that a casual vacancy[4] in a parish council or a vacancy in the office of chairman[5] shall not be filled unless notice, specifying that such vacancy is to be considered, has been issued to each councillor at least seven days[6] before the meeting. A parish council may appoint a clerk,[7] but failing such appointment the inspector of the poor[7] of the parish shall act as clerk of the parish council, and where no clerk is appointed, any reference in this Act to the clerk of the parish council shall be deemed to include a reference to the inspector of the poor of the

parish. Such clerk (if any) shall be paid such reasonable salary[8] as the parish council may think proper, and shall hold office during the pleasure[9] of the council. **Sec. 19 (2).**

1. Including Landward Committee. (Sec. 23 (3).)

2. The Board have issued model Standing Orders for the guidance of Parish Councils. (App. p. 220.) Reference may also be made to Muirhead's Bye-laws and Standing Orders for Burghs. Standing Orders, when adopted, remain in force until varied or revoked. In some parishes it is the practice for newly-elected Parish Councils to formally adopt the Standing Orders framed by their predecessors. While this is not necessary, it is no doubt an expedient course, and has the effect of bringing the Standing Orders prominently before the new members.

3. The right of the public to be admitted to meetings is a matter, among others, which Parish Councils may regulate under this section. The provisions of the Local Authorities (Admission of the Press to Meetings) Act, 1908, must, however, be kept in view.

4. See sub-sec. 4.

5. See note 1 to sec. 19 (3).

6. This provision does not necessarily apply to the statutory meeting in the year of an election. Indeed, it would be impracticable in some cases to give such notice, seeing that the result of the election which takes place in landward parishes on the first Tuesday of December is not known in remote country districts for several days afterwards. The Board (7th Report, 1901, p. xxxiii.) were disposed to take the view that, if the specific provision of sec. 19 (6), that the statutory meeting was to be held "on any lawful day within ten days after the first Tuesday of the month of December," were complied with, seven days' notice was not imperative, though it might be advisable. See 1912 P.L.M. 16.

7. Where the offices of Clerk and Inspector of Poor are held by different persons, the duties of the two officials require to be defined, and regard must be had to the statutory duties laid on the Inspector of Poor by sec. 55 of the Poor Law Act, 1845, which provides that "the Inspector of the Poor in each parish or division of a parish for which he

Sec. 19 (2). may be appointed shall have the custody of and be responsible for all books, writings, accounts, and other documents whatsoever relating to the management or relief of the poor in such parish or division of a parish. The Board have indicated their views as to the duties of the two officials thus:—"The Inspector should keep all books relating to the relief of the poor, *e.g.*, the record of applications, general register, children's separate register, pay roll, &c., &c. It is also necessary for the Inspector to keep a cash book showing the sums he receives from the Clerk or other source and his disbursements. The Clerk should keep the Parish Council's cash book, ledger, intimation of payments book, and all other accounting books. It is for the Parish Council to say which official is to keep the minute book, but, if it is kept by the Clerk, it must be accessible to the Inspector at all reasonable times." In one instance it was proposed to put the duty of paying paupers' allowances on the Clerk. The Board, however, held that this would be at variance with sec. 55 of the Poor Law Act and with par. 5 of their circular of 27th February, 1879, p. 12 of Rules and Instructions to Parochial Authorities. (Board's 9th Report, 1903, p. xxxviii.)

8. There can, of course, be no definition of the term "reasonable salary." The salary must depend on the quantity and nature of the work to be performed. "The office of Clerk is a salaried office, and cannot be held by a member of the Parish Council; if a person, not being the Inspector of Poor, is appointed Clerk without salary, he is not the statutory clerk." (Board's 1st Report, 1894-95, p. xii.)

In landward parishes, if the Clerk's duties arise chiefly under Part IV. of the Act, his salary will be paid out of the special parish rate, but if to any extent under other provisions, the salary should be apportioned between the special parish rate and the poor rate. Inspectors of Poor, however, holding office at the passing of this Act (*i.e.*, 25th August, 1894) have an appeal to the Board against the imposition or withdrawal of any duties (sec. 51 (2)). In the case of *Clark* v. *Board of Supervision*, 10th December, 1873, 1 R. 261; P.L.M. 1874, 14, it was held that that Board were entitled to prevent an Inspector of Poor from undertaking any work or office which might interfere with the proper discharge of his duties as Inspector, and that the Board's judgment on that matter was not

subject to review. The Board discourage the following offices being held by an Inspector of Poor:— Sec. 19 (2).

County councillor.
Town councillor.
Parish councillor.
Member of School Board or County Secondary Education Committee.
Manager of schools under sec. 22 of the Education Act, 1872.
Practising law agent.
Ground officer.
Medical officer.
Vaccinator.
Procurator-fiscal.
Justice of peace clerk.
Sheriff officer.
Governor of a poorhouse.

The office of Inspector cannot be held by a minor. There are no such restrictions, however, for the office of Clerk, the Board having no jurisdiction over that official.

9. Although the engagement of a Clerk is terminable at pleasure, it does not follow that it may be terminated without notice. *Morrison* v. *Abernethy School Board*, 3rd July, 1876, 3 R. 945; P.L.M. 1876, 532. An Inspector of Poor holds office *ad vitam aut culpam*, and cannot be suspended or dismissed from office except by the Board. See the case of *Board of Supervision* v. *Parochial Board of Old Monkland*, 17th January, 1880, 7 R. 469; P.L.M. 1880, 141, in which the Court held that it was incompetent for the Parochial Board to bring about the removal of an Inspector of Poor from office by indirect means, such as reducing his salary. See also the case of *Seaton* v. *Parish Council of Arbroath and St. Vigeans*, 28th May, 1896, 23 R. 763; 4 S.L.T. 25; 33 S.L.R. 583; P.L.M. 1896, 352.

It was argued in the case of *Cooper* v. *Ramsay*, 5th March, 1908, 16 S.L.T. 90; 15 Co. Co. Cases, 126; P.L.M. 1910, 50, that, as the Clerk's appointment was during the pleasure of the Council, his appointment ceased when the Council went out of office. The Sheriff-Substitute, however (J. Henderson Begg, at Aberdeen), in repelling that plea, pointed out that the electoral machinery would not work if there was an inter-

Sec. 19 (2). regnum in the clerkship between the death of an old Council and the first meeting of the new one. (See also Board's 4th Report, 1898, p. xxxvi.)

(3.) The quorum[1] of a parish council shall be one-fourth of the whole number of the council, but shall in no case be less than three.

1. The quorum must not be *less* than one-fourth of the whole number of the Council. Thus, if there are thirteen councillors, the quorum will be four. There is no restriction as to the quorum for committee meetings.

(4.) Subject to the provisions of this Act, a casual vacancy[1] in a parish council, or in any office to which the parish council appoint a representative from their own number,[2] caused by death,[3] resignation,[4] or disqualification shall, as soon as practicable,[5] be filled by the parish council, but the person filling any such vacancy shall hold office so long only as the vacating councillor would have retained the same if such vacancy had not occurred.

1. See note 1 to sec. 10 (2). Casual vacancies in Parish Councils of parishes partly landward and partly burghal, or comprising a police burgh or part of a police burgh, are filled up in accordance with the provisions of the Parish Councils (Casual Vacancies) Act, 1897. See this Act and relative notes, App. p. 238. See also requirement in sec. 19 (2) and note thereto as to seven days' notice of a meeting at which a casual vacancy is to be filled. When a vacancy occurs in an augmented Landward Committee (sec. 23 (2)) among their representatives on the Parish Council, the proper course is for the Landward Committee to fill the vacancy in their own number before they fill the vacancy among their representatives on the Parish Council. Similarly, if a vacancy occurs in the office of chairman of a Parish Council, it is desirable that the appointment to the Council should be made prior to the appointment of a chairman. A person appointed to fill a

casual vacancy must be a parish elector, *i.e.*, a person registered on the Parish Council register. (Secs. 10 (1) and 19 (1).) If his qualification is derived in respect of property within a burgh or police burgh, he must be on the municipal register in force in the burgh at the time of his election. (See note 2 to sec. 12 (8).) In landward parishes the register compiled for the election remains in force for three years, and a person whose name appears on that register will be qualified to fill a casual vacancy at any time during its currency, unless, of course, he forfeits his right by coming under some statutory disqualification, *e.g.*, bankruptcy, &c. **Sec. 19 (4).**

2. See secs. 19 (7) and 24 (5) of this Act; secs. 18 and 19 of the Public Libraries Act, 1887; and secs. 1 (1), 2 (1), and 5 of the Unemployed Workmen Act, 1905. The representative of a Parish Council on the committee of a Poorhouse Combination must also be appointed from their own number. (Board's 1st Report, 1894-95, p. xii.)

3. See note 3 to sec. 18.

4. A county councillor's resignation takes effect at the date of the delivery of the letter of resignation to the County Clerk. The statute does not prescribe any particular form of resignation or require any notice of the intention to resign, or that the resignation should be accepted. The act of resignation is therefore complete when the letter embodying the resignation is delivered to the County Clerk, and cannot be withdrawn. Opinion of counsel (A. Asher, Q.C., M.P., 31st July, 1894), 2 Co. Co. Cases, 167. This opinion was followed by Sheriff-Substitute Henderson Begg at Aberdeen in regard to the resignation and subsequent withdrawal of a resignation of a parish councillor. See *Cooper* v. *Ramsay*, referred to on p. 51, and the case mentioned on p. xlv. of the Board's 16th Report, 1910.

5. A vacancy must not be allowed to remain unfilled for an indefinite period. See Board's 11th Report, 1905, p. xl.

(5.) The parish council shall elect a chairman[1] from their own number and should the chairman be absent from any meeting of the council the councillors shall appoint one of themselves to be chairman of the meeting, and should a vacancy[2] occur in the office of chairman during the tenure of office of the council it shall

Sec. 19 (5). be supplied by a new appointment, and at every meeting the chairman shall have a deliberative, as also in cases of equality a casting,[3] vote.

1. The chairman exercises a general control over the meetings of the Parish Council. All questions of procedure, and the validity of all motions, are for his determination, and his ruling can only be set aside by a Court of law. He has power to enforce order, and may adjourn any meeting when he finds it impossible to maintain order by vacating the chair. No business can be legally transacted in the absence of a chairman. The Parish Council may competently appoint a vice-chairman if they see fit. A member may competently vote in his own favour for the office of chairman, and he may, if acting as chairman of a meeting *pro tem.* exercise his casting vote in support of his own candidature.

There is no provision dealing with the case of an equality of votes for the office of chairman of a Parish Council. In County Councils and District Committees the Local Government Act, 1889 (secs. 73 (5) and 80) provide that, when two or more persons receive an equal number of votes, the meeting shall determine by lot which of these persons is to be chairman. Parish Councils may find it expedient to adopt a similar procedure. In one instance where a Parish Council declined to follow this course the Board threatened to institute proceedings against the Council, on the ground that they were obstructing the execution of the Acts of Parliament which they were appointed to administer. (Board's 12th Report, 1906, p. xxxi.)

2. See secs. 19 (2) and (4) and relative notes.

3. The right to a casting vote does not exist at common law. It must be vested in the party exercising it either by statute or by special deed or agreement binding on all the voters. (Bell's Dictionary and Digest of the Law of Scotland, 7th Edn., p. 1111.) The chairman of a Parish Council committee meeting, for instance, is not entitled to a casting vote unless the Standing Orders so direct.

(6.) The term of office of such chairman shall not extend beyond[1] the next statutory meeting after his election, and his place shall be filled by election at a

meeting of the parish council, in this Act referred to as the statutory meeting,[2] to be held in each year after the year one thousand eight hundred and ninety-five on any lawful day within ten days[3] after the first Tuesday[4] of the month of December. The chairman shall be eligible for re-election. Sec. 19 (6).

1. He will take the chair at the statutory meeting after his election, and retain it until the business of the election of his successor is concluded. In an election year, however, the chairman demits office as a councillor on the first Tuesday of December, and is not entitled, if re-elected to the Council, to take the chair at the first meeting of the new Council unless called upon to do so. (Board's 4th Report, 1898, p. xxxv.) See also *Rex* v. *Rowlands*, 26 T.L.R. 658; 17 Co. Co. Cases, 57.

2. In addition to this statutory meeting, the Parish Council are required to hold a budget meeting in the month of July (sec. 37). Under sec. 30 of the Poor Law Act of 1845, they are bound to hold at least two general meetings in every year, one on the first Tuesday of February, or as soon thereafter as may be, and the other on the first Tuesday of August, or as soon thereafter as may be, or at such other stated times as may be approved by the Board. In many parishes it is found convenient to fix, with the Board's consent, the meetings under the Poor Law Act on the same days as the meetings under this Act.

3. Sunday falls to be counted as one of the "ten days." (Board's 5th Report, 1899, p. xxx.)

4. The period during which the statutory meeting in parishes containing fishing burghs is to be held is fixed by the Board in accordance with the provisions of sec. 7 of the Town Councils Act, 1903, if the date of the Town Council election has been altered by the Secretary for Scotland.

(7.) The representative[1] from a parish council on a district committee of a county council or on the county council *sitting as a district committee*[2] where a county is not divided into districts, shall, subject to the provisions of section seventy-eight of the principal Act,[3] be appointed annually at the statutory meeting[4] of the

Sec. 19 (7). parish council from their own number: provided always that, in the case of parishes partly landward and partly burghal, or comprising a police burgh or part of a police burgh[2] he shall be appointed by the landward committee from their own number.[3]

1. The Board obtained an opinion from the Law Officers of the Crown as to the competency of paying out of the rates the travelling expenses of the representatives of Parish Councils on various bodies, and were advised that it was not incompetent to apply the rates to the payment of the reasonable outlays of a Parish Councillor who has to journey beyond the boundaries of the parish to perform any service or duty deputed to him by the Parish Council, provided such service or duty was necessary for efficient administration. Such outlays were held to include the travelling expenses of any councillor who represents the Parish Council on the committee of a Poorhouse Combination. In regard to a representative from a Parish Council on a District Committee, however, the Board held that a parish councillor, by becoming a member of a District Committee, assumed the duty of attending meetings and of performing the ordinary work of administration within the area of the district, and that consequently his travelling expenses, while engaged on business within the district, could not be paid out of the rates. (Board's 1st Report, 1894-95, p. xv.) The reasonable expenses of committees may be defrayed in visiting boarding-out children. (Board's 9th Report, 1903, p. xxxix. See also p. 320.) Similar practices to those quoted appear to obtain with the London County Council. (See Parliamentary Debates, 25th November, 1902, vol. cxv. p. 382.) The term "reasonable outlays" covers the expenses incurred for subsistence as well as the ordinary expenses of locomotion. Subsistence allowance should not, however, be given unless the necessary absence from home was prolonged over (say) six or seven hours. (Board's 12th Report, 1906, p. xxxii.)

There is no statutory objection to the same person acting as a representative on the District Committee for the Landward Committee and for a police burgh within the same parish, but it is inadvisable, and the Board recommend appointment of different persons, each of whom will represent his own body exclusively. (Board's 15th Report, 1909, p. xxxiii.)

2. The words in italics are repealed by the Schedule to the Local Government Act, 1908, and the words underlined are the result of an amendment enacted by sec. 94 of the Burgh Police Act, 1903. **Sec. 19 (7).**

Prior to the latter amendment a doubt existed as to whether, in those parishes partly within a *police* burgh, the appointment of a representative lay with the Parish Council or with the Landward Committee. The effect of the amendment is that, in all parishes partly landward or partly burghal, or comprising a police burgh or part of a police burgh, the appointment of a representative is made by the Landward Committee. Where the parish is wholly landward the appointment is made by the Parish Council.

A woman, married or unmarried, is now eligible for election to the County Council (see note 1 to sec. 11), but she was always eligible as a representative from the Parish Council or Landward Committee. (Sec. 20 (3).)

3. Sec. 78 of the Local Government Act, 1889, provides as follows:—

"78. Whenever, for the purposes of this Act, a county is, as hereinbefore provided, divided into districts, the following provisions shall have effect with respect to the constitution of the district committee for each district:—

"(1.) The district committee shall consist of the county councillors for the electoral divisions comprised in the district, together with one representative from the [parish council] of each parish comprised or partly comprised therein, and one representative of each burgh within the meaning of the Roads and Bridges (Scotland), Act, 1878, where the management and maintenance of the highways within the burgh have, under the provisions of the last-mentioned Act, been transferred to the county. Provided that in the case of parishes partly landward and partly burghal the representative from every such parish shall be a ratepayer within the meaning of this Act.

"(2.) The representatives of the [parish councils] and burghs as aforesaid shall be appointed from time to time by their respective [parish councils] and town councils, and their appointment shall be forthwith intimated in writing to the county clerk, and, after his appointment as hereinafter

Sec. 19 (7).

provided, to the clerk of the district committee. Each such representative shall hold office until the appointment of his successor has been duly intimated.

"(3.) Provided that where a county is not divided into districts the powers and duties and liabilities of a district committee under this Act shall devolve upon the county council, and for the purposes of the management and maintenance of highways, and the administration of the laws relating to public health, the following persons shall be deemed to be county councillors; that is to say, one representative from a [parish council] of each parish comprised or partly comprised within the county, and one representative of each burgh within the meaning of the Roads and Bridges (Scotland) Act, 1878, where the management and maintenance of the highways within the burgh have, under the provisions of the last-mentioned Act, been transferred to the county; and the provisions of the immediately preceding sub-section shall apply to those representatives." (52 & 53 Vict. c. 50, sec. 78.)

The provision in sec. 78 (1) of the 1889 Act, that the representative from every parish partly landward and partly burghal shall be a "ratepayer" (see sec. 105 of that Act) within the meaning of that Act has given rise to difficulty in view of the opinion held generally that a person whose qualification is within a burgh may be elected for a landward ward. If all the landward councillors had a burghal qualification only, there would be no one eligible as a representative to the District Committee, seeing that they would not be liable in payment of any rate imposed under or in pursuance of the 1889 Act. The proviso in sec. 19 (7) of the 1894 Act must, it is thought, be held to override the proviso to sec. 78 (1) of the 1889 Act and that any member of the Landward Committee is eligible as a representative to the District Committee. This view is supported by Mr. Asher's opinion, on the assumption, as to which he had grave doubts, that a person possessing a burghal qualification only, could be elected for a landward ward. Opinion of counsel (Alex. Asher, Q.C., M.P.), 11th July, 1896. 8 Co. Co. Cases, 115. See note 1 to sec. 10 (2).

4. See sec. 19 (4).

Sec. 20.

Disqualification for parish councils.

20.—(1.) A person shall be disqualified[1] for being elected, and for being, a member of a parish council, if and while[2] he—

(*a*) holds any office[3] or place of profit[3] under the parish council or any committee[4] thereof, or

(*b*) has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of, the parish council or any committee[4] thereof.

1. Reference should be made to the Board's Circulars of 16th March, 1895; 2nd January, 1900; and 10th October, 1901, printed on p. 239.

A parish councillor must resign his seat before he becomes a candidate for an office of profit under the Parish Council of which he is a member, or for an office of profit under the House Committee of a Combination Poorhouse if his parish is one of the parishes in the Combination. (Board's 2nd Report, 1895-96, p. xxvi.; 9th Report, 1903, p. xxxvii.) Such ruling, however, does not apply to a parish councillor who is an applicant for a post as auditor, the auditor being appointed by the Board, not by the Parish Council. (9th Report, *supra*.)

On 21st June, 1910, the Local Government Board (England) issued a circular regarding the appointment to paid offices under Boards of Guardians of persons who are or have been members of those Boards. The circular states that the Royal Commission on the Poor Laws and Relief of Distress referred with approval to a rule made by the Registrar-General for England and Wales with regard to the office of registrar, and they recommend that a local authority should not be allowed to appoint an ex-member as a paid officer unless he or she has ceased to be a member of the local authority for a period of, say, twelve months before appointment. The English Board intimate generally that, in future, unless very special grounds are shown, they will not acquiesce in the appointment to any office, in respect of which approval on their part is required, of any

Sec. 20 (1). person who is or has been within twelve months a member of the Board of Guardians making the appointment.

The Bankruptcy Frauds and Disabilities (Scotland) Act, 1884, provides that a person adjudged bankrupt shall be disqualified from being elected to or holding or exercising the office of member of a Parish Council, and any person adjudged bankrupt whilst holding such office, his office shall thereupon become vacant. The expression "adjudged bankrupt" includes the case of a person whose estate has been sequestrated or with respect to whom a decree of *cessio bonorum* has been pronounced. The granting of a trust deed for behoof of creditors, however, does not involve disqualification. *Queen* v. *Cooban*, 18 Q.B.D. 269. Under the Corrupt Practices Act, 1890, and the Public Bodies Corrupt Practices Act, 1889, persons may also be disqualified for holding office on any public body for such periods as are therein specified.

Persons whose relatives are in receipt of relief are not necessarily disqualified for being elected and for being members of a Parish Council, nor are persons who have failed to pay rates, so long as their names appear on the Parish Council register. (Board's 9th Report, 1903, p. xxxvii.; 14th Report, 1908, p. xxviii.) In one case, where a decree of paternity had been granted against a councillor in respect of an illegitimate child of a pauper chargeable to the parish, the Board stated that there was no legal disqualification, and the only course was to invite the member to tender his resignation. (14th Report, *supra*.)

Unpaid service may be rendered by a parish councillor to his Council without incurring disqualification or affecting his right to vote or act. (Board's 5th Report, 1899, p. xxix.; 12th Report, 1906, p. xxxii.) It is inexpedient, however, for any one holding an office of profit under one Parish Council to be a member of another Parish Council. (5th Report, *supra*.) In reply to a question whether an elector whose wife was in the employment of the Parish Council, the Board stated that, whether the provisions of this section applied or not, it was impossible to regard with favour the employment by the Parish Council of a member of the family of one of the councillors. Such employment was manifestly open to serious objection.

The Board have held that a payment by a Parish Council to a co-operative society, which comprised among its members several parish councillors, was not illegal. They fur-

ther stated that they saw no illegality in members of a Parish Council, who were also members of a co-operative society, sitting on the Clothing Committee of the Parish Council, so long as they did not, in terms of the proviso to this section, vote or act in any matter in which they had a pecuniary interest. (15th Report, 1909, p. xxxii.) See also sec. 20 (2) (*f*), and the case referred to in the note to that sub-section. **Sec. 20 (1).**

A Justice of the Peace clerk, a clerk and treasurer to a School Board, a bank agent of a bank at which the Parish Council have an account, and a Sheriff's officer have been held by the Board to be qualified for election as parish councillors. (11th Report, 1905, p. xl.; 13th Report, 1907, p. xxxiv.) In short, they have been advised that the disqualification provided by this sub-section was not intended to include the case of a special piece of work being done at a statutory rate by a parish councillor bound in respect of his holding an office to perform that work. See also opinion of counsel (Mr. J. A. Clyde, K.C., M.P.), 1st February, 1911, 17 Co. Co. Cases, 99. On the other hand, a coal agent, if paid by commission, would be debarred from supplying coals to paupers to the order of the Inspector of Poor; and it was considered both inadvisable and objectionable, although there might not be any statutory disqualification involved, that an insurance agent, if paid by commission, should insure the lives of paupers chargeable to the Parish Council of which he was a member, even should he receive the premiums from the paupers direct. (13th Report, *supra*.)

A suggestion having been made that parish councillors, mostly working men, should receive payment from the rates for time expended in the performance of parochial duties during working hours, the Board held that, apart from the principle involved, indirectly, if not directly, the proposal amounted to payment for service rendered, and might be struck at by this section. (10th Report, 1904, p. xxxviii.)

A cautioner for a person holding a contract with a County Council was thought to have been disqualified for election to the County Council in virtue of the provisions of sec. 9 of the Local Government Act of 1889, which provisions correspond to those of this section. Opinion of counsel (Mr. Asher, Q.C., M.P.), 11th July, 1896, 8 Co. Co. Cases, 107.

In all cases of disqualification the proper course is for the Parish Council to pass a resolution declaring the seat vacant,

Sec. 20 (1). and thereafter proceed to fill the vacancy. An intimation that such a resolution has been passed should be sent to the disqualified member See the case of *Thom* v. *Magistrates of Aberdeen*, 28th February, 1885, 12 R. 701, and Mr. Asher's opinion, *supra*.

The Council of a city advertised for certain articles for the use of the corporation during the ensuing year. The person whose tender was accepted desired to stand as a candidate at the election of councillors, which was to take place before the expiration of his contract. A committee of the Council released him from his contract, subject to the approval of the Council, from the date of their resolution. He was then nominated, and afterwards elected, but the Council, while they had approved the resolution of the committee prior to the day of election, had not done so prior to his nomination. It was *held* that the advertisement, tender, and acceptance constituted a contract, that he had an interest in the contract, that the ratification of the resolution releasing him did not relate back to the date of the resolution, because the interest of persons other than the parties to the contract might be affected, and that therefore the person in question had at the date of his nomination an interest in a contract with the Council, and was disqualified and his election void. *Ford* v. *Newth*, 1901, 1 Q.B. 683; 8 Co. Co. Cases, 44.

2. It is to be observed that a person is disqualified for being elected and for being a member of a Parish Council *if and while* he holds an office or place of profit, or has, directly or indirectly, a share or interest in any contract, &c., under the Council. Once the contract is complete there can be no disqualification, although the question of an illegal payment may arise in respect that, contrary to the rule of common law, a payment has been made by the Council to one of its own members. In a case that came before the Board they expressed the opinion that disqualification *had been* incurred, and that *during the continuance of the contract* it would have been competent for the Parish Council to have declared the councillor's seat vacant. Some difference of opinion arose as to when the contract ceased, whether on completion of the work or on payment being made therefor. The Board took the view that the contract lasted till payment for the work had been made, and that during that period the councillor retained his interest in the

contract and was liable to be disqualified. (Board's 14th Report, 1908, p. xxviii.)

Sec. 20 (1).

3. See note 1 as to unpaid service. The word "office" is not to be read as disjoined from the words "of profit."

4. A person holding a contract with the Parish Council would, it is thought, be disqualified for being elected and for being a member of an augmented Landward Committee of the same parish under sec. 23 (2), seeing that the Landward Committee is described as a "committee of the Parish Council." It is by no means clear, however, whether disqualification would attach to a person having a contract with an augmented Landward Committee and render him ineligible for being elected and for being a member of that Committee. There seems no authority for substituting the words "Landward Committee" for "Parish Council" in this section. Such person would, of course, be disqualified for appointment by the Landward Committee as one of their representatives on the Parish Council.

(2.) But a person shall not be disqualified, or be deemed to have any share or interest in such a contract or employment, by reason only of his having any share or interest in—

(*a*) any lease, sale, or purchase of land,[1] or water, or right of water supply, or any agreement for the same; or

(*b*) any agreement for the loan of money, or any security for the payment of money only; or

(*c*) any newspaper in which any advertisement relating to the affairs of the parish council or any committee thereof is inserted; or

(*d*) any company which contracts with the parish council, or any committee thereof, for lighting or supplying with water, or insuring against fire, any property of the parish council; or

Sec. 20 (2).

(*e*)[2] any contract with the council for the supply from land, of which he is owner or occupier, of stone, gravel, or other materials for making or repairing highways or bridges, or for the transport of materials for the repair of roads or bridges in his own immediate neighbourhood; or

(*f*) any railway company or any company incorporated by Act of Parliament or Royal Charter, or under the Companies Acts 1862 to 1890:[3]

Provided that no parish councillor shall vote or act in any matter in which he has a pecuniary interest.[4]

1. Sec. 3 of the Interpretation Act, 1889, defines "land" to include, unless the contrary intention appears, messuages, tenements, and hereditaments, houses and buildings of any tenure.

2. This provision seems to have been borrowed from the English Local Government Act of 1894, but it hardly applies to Scottish Parish Councils, seeing they have no power to repair or to contribute towards the repair of highways, nor have they power to repair bridges, save in the circumstances explained in the notes to sec. 29. In the case of a parish councillor who had supplied stones from a quarry, of which he was tenant, to a contractor who had contracted with the Parish Council for the making of roads and building of walls in connection with a cemetery extension, the Board stated that they did not think there would be any disqualification. (11th Report, 1905, p. xxxix.)

3. See the case of *Paterson* v. *Portobello Town Hall Company*, 1866, 4 Mac. 726, particularly the opinion of Lord Curriehill. Reference may also be made to the answer given by the Speaker in the House of Commons on 14th February, 1896, to the effect (*a*) that a member who has a direct pecuniary interest in a question ought not to vote; and (*b*) the House has on more than one occasion allowed the vote of a director of a company on a bill promoted by the directors. On some other occasion it has given a decision

which is somewhat conflicting with that. Parliamentary Debates, 1896, vol. 37, p. 350. It is not suggested that the Parliamentary practice has any bearing on the practice of Parish Councils in view of the specific enactment in the proviso to sec. 20 (2), but the reference to the former practice is interesting. Sec. 20 (2).

4. A parish councillor voting for his prospective son-in-law, who was a candidate for the office of Inspector of Poor, was held by the Board not to be a contravention of the proviso. (13th Report, 1907, p. xxxiv.)

There is no illegality in a Parish Council making a payment to its own members under any of the special circumstances set forth in this sub-section nor for services rendered or goods supplied to paupers chargeable to other parishes.

(3.) No person shall be disqualified by sex[1] or marriage for being elected, or being, a member of a parish council, or for being appointed a representative of that council on a district committee of a county council, or on a county council where a county is not divided into districts.

1. See sec. 11 and notes thereto.

PART III.—Powers and Duties transferred to Parish Councils.

Parochial boards to cease.

21. On and after the fifteenth day of May[1] in the year one thousand eight hundred and ninety-five, all enactments regulating the constitution and election of parochial boards shall be repealed,[2] and the parochial board of any parish shall continue to hold office only until the said day, and no longer; and on and after such day, every reference in any Act of Parliament, scheme, deed, or instrument to a parochial board constituted under the law in force at the passing of this

Sec. 21. Act, shall be read and construed as referring to a parish council[3] constituted under this Act.

1. Compare sec. 56 (1). Parish Councils took office on that day.

2. See sec. 55 and Schedule I.

3. See notes to sec. 22.

Parish councils to take the place of parochial boards.

22. A parish council[1] shall, subject to the provisions of this Act, come in place of a parochial board[2] and shall be deemed to be a continuance thereof, and a parish council[1] shall have and may exercise all the powers and duties, and shall be subject to all the liabilities of a parochial board, and all the provisions of any Act of Parliament in force at the passing of this Act relating to or dealing with the powers and duties of parochial boards, and the appointment, powers, and duties of their officers, in so far as not inconsistent with this Act, shall subsist and have effect.[3]

1. "Parish Council" in this section does not include a "Landward Committee." See *Magistrates of Kilmarnock and Others* v. *Reid and Others*, 12th March, 1896, 3 S.L.T. 315; 3 Co. Co. Cases, 35.

2. By a deed of trust executed in 1885 Viscountess Ossington endowed a coffee tavern which she had erected in Kilmarnock, and disponed it to certain trustees for administration. One of the trustees was the "chairman of the Parochial Board of the parish, and his successor in office for the time being, so long as such Board shall exist." Held that under sec. 22 the chairman of the Parish Council was not entitled *ex officio* to act as a trustee under the deed. *Parish Council of Kilmarnock* v. *Ossington's Trustees*, 20th June, 1896, 23 R. 833; 33 S.L.R. 651; 4 S.L.T. 52; 3 Co. Co. Cases, 42; 1896, P.L.M. 411.

3. See secs. 47 to 53 inclusive.

PART IV.—New Powers conferred upon Parish Councils in Landward Parishes and Landward Parts of Parishes.

Sec. 23.

Landward committees to be constituted in certain parishes.

23.—(1.) In this Part[1] of this Act the expression parish council does not include the parish council of a burghal parish.[2]

1. It is very important to note that the powers conferred by this part of this Act (secs. 23 to 29) apply only to landward parishes and the landward parts of parishes. In landward parishes the Parish Council is the administrative body for this part of the Act as for all other parts, but in parishes partly landward and partly burghal, or comprising a police burgh or part of a police burgh, the administrative body in the landward area is the Landward Committee, constituted in terms of sec. 23 (2). That is to say, the functions under Part IV. are in the hands of the parish councillors elected for the landward part of the parish, who, in cases where necessary, may be augmented in number by the Board in terms of the proviso to sec. 23 (2). In parishes partly landward and partly burghal the words "Parish Council" wherever they occur in this part of the Act must be read as referring to the Landward Committee.

2. See definition of "burghal parish" in sec. 54.

(2.) For the purpose of exercising and performing the powers and duties conferred and imposed by this Part of this Act, in the case of a parish which—

(*a*) is partly landward and partly burghal; or

(*b*) comprises a police burgh or part of a police burgh,

there shall be a committee of the parish council, in this Act referred to as the landward committee, which shall in every case consist of the whole number of parish councillors for such parish, excepting only the councillors representing the burghal part of the parish,

Sec. 23 (2). or such police burgh, or part of a police burgh; and, in the case of such parishes, the powers (except the power to raise money by rate or loan)[1] and duties conferred and imposed on a parish council by this Part of this Act, shall be exercised and performed by the landward committee, which for such purpose and for the purpose of the Public Libraries Consolidation (Scotland) Act, 1887,[2] shall be deemed to be the parish council of the parish, and which may sue and be sued as such landward committee.[3] For such purpose,[4] such burghal part and such police burgh or part of a police burgh shall be deemed to be outwith such parish,[5] and shall not be rated by the parish council.

50 & 51 Vict. c. 42.

Provided that where, in terms of section nine of this Act, a landward committee would consist of less than five members, the Board may, if they deem it expedient with a view to the proper transaction of business, by order provide for the election, along with, and subject to the same provisions as, the election of parish councillors, of such additional number of members[6] of such landward committee as shall be named in the order. In such case, if the election of the landward committee takes place according to parish wards, at least one member shall be added for each ward. Such landward committee, as increased, shall appoint from their own number to the parish council the requisite number of parish councillors,[7] as determined in terms of section nine of this Act, and shall fill any casual vacancy[8] occurring in the number of such parish councillors or in the landward committee.

1. The Parish Council are the borrowing authority (sec. 28 (2)), and they must proceed to raise whatever sum the

Landward Committee require. Sub-sec. 3 provides that the Landward Committee may exercise and perform their duties without reference to and without the approval of the Parish Council. See, however, the note to that sub-section. **Sec. 23 (2).**

It is doubtful whether the Landward Committee, if they saw fit, could not claim the power to levy the public library rate, seeing that for the purpose of the Libraries Act they are deemed to be the "Parish Council" of the parish, and that sec. 7 of the Public Libraries Act, 1887, lays the duty of levying the library rate on the Board, *i.e.*, the Parochial Board, now the Parish Council. (Secs. 21 and 22, *supra.*) On the other hand, it has been held that a Landward Committee were not the successors to the Parochial Board. (*Magistrates of Kilmarnock* v. *Reid and Others;* note 1 to sec. 22, *supra.*) But in any event it is undesirable, even if competent, that the Landward Committee should be introduced as a rating authority for this one rate, and in practice the Parish Council levy and collect the rate on behalf of the Library Committee.

2. Royal, Parliamentary, and police burghs, and burghs of barony and regality are separate administrative areas for the purposes of the Public Libraries Act.

In reply to a question whether in a parish partly landward and partly burghal the Parish Council could, with the consent and concurrence of the Town Council, competently adopt the Public Libraries Act and carry its provisions into effect within both the burgh and the landward part of the parish, the Board stated that there was no authority for this course. The proper procedure was for each body to adopt the Libraries Act within its own jurisdiction, *i.e.*, the Town Council for the burgh and the Landward Committee for the landward part of the parish, and thereafter to come to an agreement for carrying the Act into execution under the powers given by the Public Libraries Act, 1899. (Board's 7th Report, 1901, p. xxviii.) If the Landward Committee consist of less than five members the provisions of sec. 18 of the Public Libraries Act, 1887, cannot be complied with. That section, as amended by this sub-section, requires the Landward Committee to appoint a Library Committee consisting of not less than ten nor more than twenty members, half of whom shall be chosen from amongst their own number and the remaining half from amongst the householders of the parish other than the members of the Landward Committee.

Sec. 23 (2). In one case where the number of members of the Landward Committee was three, the Board suggested an application to them to increase the number of members, which, however, could not be given effect to till the next election. (Board's 9th Report, 1903, p. xxxvi.) In appointing a Library Committee under sec. 2 of the Public Libraries Act, 1899, the Town Council and Landward Committee must follow the procedure laid down in sec. 18 of the 1887 Act, *i.e.*, one-half of the joint committee must be chosen from amongst the householders of the combined area other than members of the Town Council and Landward Committee. The other half is appointed from the two bodies subject to agreement as to proportion by each. (Board's 10th Report, 1904, p. xlvii.)

The expense of deciding whether the Public Libraries Act should or should not be adopted in the landward part of a parish is chargeable to the poor rate, which, of course, is levied over the whole parish. See sec. 6 of the Public Libraries Act, 1887, and Board's 11th Report, 1905, p. xliii.

A Parish Council or Landward Committee have no control or jurisdiction over the Library Committee. (Board's 10th Report, 1904, p. xlvii.)

3. Unlike the Parish Council (sec. 32) the Landward Committee is not a body corporate.

4. That is, the purpose of exercising and performing the powers and duties under this part of the Act.

5. See note 6 to sec. 54.

6. The Board have provided an additional number of members in several cases, there being forty-one increased Landward Committees in May, 1912. The extension of burgh boundaries so as to include a portion of the landward area of a parish, for which there is a representative on the Landward Committee, has no effect upon that person's qualification as a member of the Landward Committee. He will continue to act as a member of the Committee for the period for which he was elected. (Board's 2nd Report, 1895-96, p. xxvi.)

7. A casual vacancy in an increased Landward Committee is filled up by that Committee. The Parish Councils (Casual Vacancies) (Scotland) Act, 1897, does not apply.

8. See note 4 to sec. 17 (2).

(3.) A landward committee may exercise and perform their powers and duties under this Part of this Act without reference to and without the approval of the parish council.[1] The provisions of sub-sections two, three, five, and six of section nineteen[2] of this Act shall apply to a landward committee with the substitution of the expression "landward committee" for "parish council" occurring therein. Sec. 23 (3).

1. Reference here may be made to the case of *The Lord Provost, Magistrates, and Town Council of Edinburgh* v. *The Distress Committee for the City of Edinburgh*, 20th November, 1909, 1910 S.C. 153; 2 (1909) S.L.T. 411. The main point for consideration in that case was whether the Town Council, from whom the Distress Committee were entitled to requisition funds, had a right to criticise a requisition presented to them with a view to seeing that the purposes for which the money was to be applied were authorised by the terms of the statute—in that particular case the Unemployed Workmen Act, 1905. The decision of the Court was (four judges to three) that the Town Council had a power of review over such requisitions, and that they were not merely in the position of collectors. Several instances of bodies (one of whom was the Landward Committee) who requisition funds from other bodies, or for whom other bodies act as collectors, were brought to the notice of the Court, but the Lord President drew a distinction between the Distress Committee and the other bodies mentioned, owing to the phraseology of the various Acts under which the bodies requisitioning derived their respective powers. "It would," he says, "require explicit words in the statute"—presumably such as are used in this sub-section—"to deprive the Town Council of their power of review."

If, however, the Parish Council delegate certain of their powers to the Landward Committee, the minutes of the Landward Committee relating thereto would fall to be submitted to the Parish Council. (See Board's 6th Report, 1900, p. xxxiii.)

2. In view of sub-sec. 2 of this section it was unnecessary to apply sub-sec. 4 of sec. 19 to a Landward Committee,

Sec. 23 (3). seeing that a vacancy in a Landward Committee not increased must necessarily be a vacancy in the Parish Council. What constitutes a casual vacancy in an increased Landward Committee is not, however, stated, but it may be assumed that the causes specified in sec. 19 (4) for Parish Council casual vacancies will constitute casual vacancies in increased Landward Committees.

(4.) Where the population of the landward part of a parish partly landward and partly burghal, exclusive of any police burgh or part of a police burgh comprised therein, does not exceed one hundred,[1] a landward committee, as provided for in sub-section two of this section, shall not be constituted unless and until the Board shall so order on the application of not fewer than five parish electors residing within such landward part.

1. For a list of the parishes where the landward population does not exceed 100, see the return referred to in note to sec. 9 (3).

Additional powers of parish councils.

24.—(1.) A parish council[1] shall have the following powers, namely, power—

(*a*) to provide or acquire buildings[2] for public offices[3] and for meetings, and for any purposes connected with parish business, or with the powers or duties of the parish council, and to provide or acquire land for such buildings; and

(*b*) to provide, or acquire,[4] maintain, lay out,[5] and improve grounds for public recreation; and

(*c*) to acquire by agreement any right[6] of way, whether within the parish or in an adjoin-

ing parish, the acquisition of which is beneficial to the inhabitants of the parish[7] or of any part thereof; and **Sec. 24 (1).**

(*d*) to accept and hold any gifts of property for the benefit of the parish;[8] and

(*e*)[9] to execute any works (including works of maintenance or improvement) incidental to or consequential on the exercise of any of the foregoing powers, or in relation to any property[10] of the parish council; and

(*f*)[9] to contribute towards the expense of doing any of the things above mentioned, or to agree or combine with any other parish council,[1] or other authority or person, to do or contribute towards the expense of doing, any of the things above mentioned.

1. See note 1 to sec. 23 (1).

2. See sec. 28 as to borrowing powers, and compare sec. 48 (2). The Board have been advised that a Parish Council are not authorised by this sub-section to provide a hall for public meetings, concerts, &c., or a reading room for the inhabitants of the parish. The provision only empowers the erection of buildings for the meetings and business of the Parish Council. Any room or small hall provided for these purposes might, however, be used for any purpose of which the Parish Council approved. The Board have also expressed the opinion that the section did not authorise the provision of houses for parochial officials, *e.g.*, Medical Officer, and Inspector of Poor. (Board's 1st Report, 1894-95, p. xii.) The Parish Council may, however, provide accommodation for a caretaker, who may be the Inspector of Poor. It is not easy to follow the restriction thus placed on Parish Councils, more especially in regard to the provision of a house for a Medical Officer, which is often a matter of supreme importance in country parishes, especially in the Highlands and Islands. There is a duty on the Parish Council to

Sec. 24 (1). provide medical attendance for the poor (sec. 69 of Poor Law Act, 1845), and if the services of a medical man cannot be procured save by the provision of a suitable house, it seems to be placing an unduly narrow meaning on the section to say that the erection of such a building would not be a purpose "connected with the powers or duties of the Parish Council." The point has, however, been frequently before the Board, as the following references to their reports testify:—7th Report, 1901, p. xxvii.; 9th Report, 1903, p. xxix.; 10th Report, 1904, p. xliv.; 15th Report, 1909, p. xxxv.

The Board decline to countenance a proposal of a Parish Council to erect a public hall by means of a voluntary assessment, even where the ratepayers offered no opposition. (11th Report, 1905, p. xliii.)

The Landward Committee are not restricted to the landward part of the parish in providing or acquiring buildings for their meetings. (Board's 2nd Report, 1895-96, p. xxvi.)

As to whether the title to heritable property acquired by a Landward Committee should be taken in the name of the Committee or of the Parish Council, see note 1, to sec. 25 (15).

3. The Board have declined to consent to a loan for offices where suitable accommodation was available in the parish on reasonable terms. (14th Report, 1908, p. xxxvi.)

4. The Parish Council may provide or acquire a recreation ground either by purchasing outright or renting, or they may accept the same as a gift under sub-sec. (*d*). If land cannot be had without buildings, both may be acquired. (Board's 14th Report, 1908, p. xxxvi.) They may erect a pavilion and frame charges for the regulation of its use, but it must not be confined to the members of any particular club. The expression "grounds for public recreation" would include a public bowling green, but, like the pavilion, it must be open to all members of the community, and not confined to any particular section or club. (Board's 15th Report, 1909, p. xxxii.) The fact that a recreation ground provided by a Landward Committee would be mainly used by the inhabitants of the burghal portion of the parish would not preclude the Landward Committee from undertaking its control and management, provided its use was not restricted to the inhabitants of the burgh. (Board's 4th Report, 1898, p. xxix.)

5. The power to lay out will include the power to provide seats and appliances for recreation. (Board's 3rd Report, 1896-97, p. xxvi.) The Board expressed the opinion (2nd Report, 1895-96, p. xxvi.) that a Parish Council was not authorised to take any action to vindicate the public right to what is alleged to be a common green. Such power is conferred on Parish Councils in England by sec. 6 (1) (*c*) (iii) of the English Local Government Act, 1894. Having regard, however, to the case of *Milne* v. *Landward Committee of the Parish Council of Inveresk*, 12th December, 1899, 2 F. 283; 7 S.L.T. 285; 37 S.L.R. 210; 1900, P.L.M. 254, it may be argued that a Parish Council in Scotland has such a right at common law. That case had reference to the erection by the Landward Committee of seats on a public bleaching green and on a public right of way, and seemed to indicate (opinion of Lord Trayner) that the Landward Committee, as representing the inhabitants of the parish, could do anything the inhabitants themselves could lawfully do. In the opinion of Lord Young the "Parish Council did not at all exceed its powers or violate its duty in any way in helping the public to defend their rights and interests in this matter." The power "to maintain, lay out, and improve" would appear to be confined to grounds provided or acquired by the Parish Council. **Sec. 24 (1).**

The decision in the Inveresk case has been often quoted in support of many proposals put forward by Parish Councils involving the exercise of powers not given by the statute. Its application in not a few cases has given rise to doubt, and generally the Board have declined to advise Parish Councils to undertake schemes not expressly authorised by the provisions of the Act. See, for instance, note 2 to sec. 29 as to the provision of seats on public ways. In one instance a Parish Council proposed to provide, either out of the rates or out of the proceeds of grazings, instrumental music in a recreation ground acquired under this section, but the Board stated that such expenditure would be open to challenge. (6th Report, 1900, p. xxxii.)

Sub-sec. 2 empowers Parish Councils to let, sell, or exchange, subject to certain conditions, any land or buildings acquired under Part IV. of the Act, but there seems to be some doubt as to the power to let public recreation grounds temporarily for shows, football matches, &c. In a case brought before the Board it was proposed to let a recreation ground for a cattle show. While the Board thought the

Sec. 24 (1). Parish Council might run the risk of any person taking exception, they regarded the question as one of difficulty, notwithstanding the terms of sub-sec. 2, seeing that during the continuance of the show ratepayers would be excluded from the park except on payment for admission, and the Board were not prepared to say that a ratepayer would not be entitled to interdict the Parish Council from allowing such events to be held in the public park. (11th Report, 1905, p. xlviii.) It has been held in England that a public body is not entitled to impose a charge for admission to a pleasure ground or to use it for the purpose of making a profit. *Attorney-General* v. *Leeds*, 24 S.J. 539.

Unfortunately the statute confers no power on Parish Councils to make bye-laws for the purpose of regulating the use by the public of recreation grounds. At the same time, regulations are a necessity, and although they are not competent in the sense that they could be enforced in a Court of law, the Board have always advised Parish Councils to frame such rules and regulations, and to take the risk of challenge in the event of their having occasion to enforce them.

6. The express authority is confined to acquiring a *right*, but if the *right* cannot be acquired without the purchase of the land, the authority would cover the acquisition by agreement of the necessary land. (Board's 2nd Report, 1895-96, p. xxvii.)

The proprietors on either banks of a river having agreed to grant a right of access to a particular spot, the Board held that such accesses formed a right of way within the meaning of this sub-section, and that the Parish Council under sub-sec. (*e*) were entitled to erect a foot bridge across the river as a work incidental to or consequential on the exercise of the power given to acquire the right of way. (15th Report, 1909, p. xxxvii.) As to erection of seats on a right of way, see the case of *Milne* v. *Landward Committee of Inveresk* (note 5, *supra*) and notes to sec. 29.

The fact that a footpath over which the public originally acquired by prescription a right of passage had by natural causes ceased to exist (in the present case it was washed away by the river) would not *per se* entitle them to encroach upon the adjoining land in order to maintain a similar right of passage. Opinion of Counsel, 29th January, 1898, Mr. (now Lord) Dundas, K.C., 5 Co. Co. Cases, 94. In the course of an opinion relating to the alleged obstruction

of a right of way, Counsel pointed out that "it is undoubted law that the public loses no right by making an unimportant deviation from an old track, either, for example, the encroachment of a river or of the sea, the intervention of swampy ground, or the actings of the landowner in the lawful management of his property. The only result is that for the time at least, or it may be permanently, the new track supersedes the old." Opinion of Counsel, 7th September, 1899 (Mr. Rankine, Q.C.), 6 Co. Co. Cases, 116. **Sec. 24 (1).**

7. The expression "parish" in a parish partly landward and partly burghal means the landward portion of the parish only.

8. See note 7, *supra*. The power conferred on Parish Councils by this sub-section has been extensively made use of. It is a comprehensive provision, and taken in conjunction with sub-sections (*e*) and (*f*) enables Parish Councils to accomplish indirectly many things for which they have no express authority. For instance, as already shown in notes to sub-sec. (*a*), Parish Councils have no power to provide public halls, yet they may accept such buildings as gifts and execute any works of maintenance or improvement when acquired. In one case that came before the Board an effort had been made to provide a hall by public subscription. The money raised, however, was insufficient, and the Parish Council were asked to erect the hall in consideration of the amount subscribed being handed over to them. The Board held that the receipts by the Parish Council of part of the cost of providing the hall would not entitle them to contribute from the rates for such a purpose. They indicated, however, that were the subscribers to erect the hall and hand it over under this sub-section it would be competent for the Parish Council to accept it, notwithstanding the debt that would be upon it. The power to accept gifts of property extends to gifts of property which are subject to burdens, provided the burdens are not of such a nature or extent as to deprive the gift of value, or make it other than a benefit to the parish. The doubt was expressed, however, whether a hall for a village or district of a parish could be said to be "for the benefit of the parish" in the sense of this sub-section. (7th Report, 1901, p. xxvii.; see also 8th Report, 1902, p. xxviii.) In another case where a building costing £1500, upon which there was a debt of £360, was handed over,

Sec. 24 (1). the Board gave their consent to a loan for the purpose, *inter alia*, of clearing off the debt. (9th Report, 1903, p. xxix.) The question whether the property proposed to be transferred would constitute a "gift" for the benefit of the parish is, of course, one, primarily at least, for the Parish Council to consider.

Among the cases of doubtful "gifts" may be mentioned the following as appearing in the various Reports of the Board. The proposal to accept a gift of a lamp, and the Parish Council to supply the gas therefor, was considered to be beyond the scope and intention of even the wide powers conferred by sub-secs. (*e*) and (*f*). (12th Report, 1906, p. xxxviii.) In another case a Parish Council desired to convert a public hall that had been gifted to them into a gymnasium and provide the necessary appliances as part of the expense of the maintenance or improvement of the property, or under the power to execute works incidental to or consequential on the exercise of the power to accept the gift. The Board held, in this particular case, that the proposal was neither compatible with the terms of the deed of gift nor with the powers conferred by sub-sec. (*e*). (14th Report, 1908, p. xxxvii.)

The absence, until the passing of the Local Government Act, 1908, of power in landward districts to provide fire-extinguishing apparatus led to a number of "gifts" to Parish Councils of hose, fire engines, &c., and the Board, apparently out of sympathy with the object in view, took a liberal interpretation of the powers of Parish Councils to maintain and improve such gifts, so much so that a simple gift of hose has been so *improved* as to end in a fully-equipped fire brigade. The Board do not now, however, encourage Parish Councils to accept such gifts. Having regard to the powers given to County Councils under sec. 8 of the Local Government Act, 1908, they consider the maintenance of a fire brigade and fire-extinguishing appliances in landward areas to be matters for that body. In regard to a proposal by a Parish Council to sell to the County Council hose, &c., gifted to the former body under sub-sec. (*d*), the Board stated that they agreed in thinking the County Council were the proper authority to be charged with the provision and maintenance of all fire-extinguishing appliances within their area, but they could not see how the Parish Council could divest themselves of the gift, which had been accepted under sub-sec. (*d*), and apply the pro-

ceeds to some other purpose. They advised the Parish Council to enter into an arrangement with the County Council, under sub-sec. (*f*), to manage and maintain the apparatus for them. **Sec. 24 (1).**

Frequently Parish Councils desire to take over the management of and make regulations for the preservation of village greens or commonties, and the Board have advised that they should secure, if possible, the rights of proprietors in these properties under this sub-section, in which event they would be entitled to regulate the use of these places subject to any existing rights. (4th Report, 1898, p. xxix.) See, however, note 5, *supra*.

9. See notes to sub-sec. (*d*), *supra*, in which the application of these sub-sections is dealt with.

10. The powers are not limited to property acquired under this Part of the Act, but apply to any property of the Parish Council.

(2.) A parish council[1] may let,[2] sell, or exchange any land or buildings provided or acquired under this Part of this Act,[3] and vested in the council,[4] but the power of letting for more than a year and the power of sale or exchange shall not be exercised without the consent of the Board.[5]

1. See note 1 to sec. 24 (1).

2. See note 5, *supra*.

3. It is important to notice that this sub-section applies only to land or buildings acquired under this part of the Act. Compare sec. 48 (2), which deals with property transferred under sec. 48 (1). Parish Councils apparently do not require the Board's consent to dispose of property neither acquired under this part of the Act nor transferred under sec. 48 (1). (See Board's 12th Report, 1906, p. xlii.)

4. See note 2, *supra*.

5. The Board decline to be made parties to deeds of sale. Their consent is inscribed, if desired, on the deed, being written in holograph and signed by the President or a member of the Board, or by the Secretary or Assistant-

Sec. 24 (2). Secretary if they are authorised by the Board to sign. See sec. 5 (1). Such consents are not subject to stamp-duty.

The Board are frequently asked to give their consent under secs. 24 (2) and 48 (2) to the alienation by Parish Councils of property to which they have no legal title, but the Board do not consider they would be justified in refusing consent merely on the ground that it had not been legally acquired. They state, however, that the granting of consent in no sense implies they are satisfied that, or have even considered whether, the Parish Council have a valid title to the property. The investigation of title is outwith their province, their duty being to protect the public, not the purchaser, and to see that the Parish Council do not sell when it is inadvisable in the public interests. (12th Report, 1906, p. xlii.)

(3.) With a view to the due enforcement of the provisions of the Public Health Acts, a parish council[1] shall have and may exercise, within, or in respect to, the parish the same powers as are conferred upon *any two householders by section ninety-six of the Public Health (Scotland) Act*, 1867, *and upon*[2] any five ratepayers by section seventeen [3] of the principal Act, and upon a county council by sub-section (2) of section fifty-three[4] of the principal Act.

30 & 31 Vict. c. 101.

1. See note 1 to sec. 24 (1).

2. The Public Health (Scotland) Act, 1867, is repealed by the Public Health (Scotland) Act, 1897. The words in italics are, therefore, obsolete. Parish Councils, however, have far more extensive powers given them under the latter Act. Sec. 6 authorises them to make written application to the Board to inquire into the sanitary condition of any district or part of a district. Under sec. 22 the Parish Council may make a representation to the local authority requesting that body to proceed in the manner there set forth respecting the nuisances enumerated in sub-secs. 6 and 8 of sec. 16. They may further, under sec. 36, make a representation as to

"any trade, business, process, or manufacture carried on in any manufactory or premises, and causing effluvia," if it appears that it is a nuisance or injurious or dangerous to the health of any of the inhabitants of the district. Secs. 122 and 131 authorise them to requisition the local authority for the formation of a special drainage and special water supply district respectively, and sec. 146 gives them a title to proceed against the local authority by summary petition to the Sheriff in the event of that authority failing or neglecting to perform any duty imposed upon them by the Public Health Act. Any expenses incurred by a Parish Council under these provisions will, like all other expenses under Part IV. of the Act, fall on the special parish rate. Reference may also be made to secs. 185 and 186 of the Public Health Act, which require that a copy of all bye-laws made by a local authority under that Act shall be transmitted to the Parish Council of every parish to which such bye-laws relate, in the first place, for inspection prior to confirmation by the Board, and, secondly, for inspection and delivery to ratepayers of copies, if required, after they have become law. **Sec. 24 (3).**

3. Sec. 17 (2) (*c*) of the Local Government Act, 1889, as amended by secs. 122 (3) and 131 (3) of the Public Health Act, 1897, provides that, except in the case of resolutions as to special drainage and water supply districts, "any five ratepayers in the district may appeal from any proceedings or order of a District Committee to the County Council, who shall have power to conform or vary or rescind such proceedings or order; and such proceedings or order shall be stayed pending the appeal, but the power of appeal hereby given shall not apply to any proceedings for the removal of a nuisance; and nothing in this Act contained shall affect or prejudice any proceedings to enforce the provisions of the Public Health Acts, save only that when necessary such proceedings shall be taken by or against the District Committee instead of against the Parochial Board as local authority under the said Acts. The medical officer or the sanitary inspector of the county or district may appeal to the County Council, and the County Council may on such appeal make an order under the Public Health Acts."

4. Sec. 53 (2) of the Local Government Act, 1889, provides that "if it appears to the County Council that the Public Health Acts have not been properly put in force within any

Sec. 24 (3). district, or that any other matter affecting the public health of the district requires to be remedied, the Council may cause a representation to be made to the [Local Government Board for Scotland] on the matter."

(4.) A parish council[1] shall have the same power of making a representation with respect to allotments as is conferred on parliamentary electors[2] by the Allotments (Scotland) Act, 1892.

55 & 56 Vict. c. 54.

After a parish council[1] is elected for any parish, the powers and duties of allotment managers[3] under the Allotments (Scotland) Act, 1892, shall, in relation to allotments provided for the parish,[4] be exercised and performed by the parish council,[1] without any appointment.

1. See note 1 to sec. 24 (1). The Parish Council are presumably confined to making their representation to the local authority of the county, as they have no jurisdiction or interest regarding allotments in burghs and police burghs.

2. Sec. 2 (1) of the Allotments (Scotland) Act, 1892, provides that—

"*Duty of local authority to acquire land for allotments.*

"On a representation in writing to the local authority of any burgh or county by any six registered parliamentary electors or ratepayers resident, in the case of a burgh, in that burgh, and, in the case of a county, in some parish in that county, that the circumstances of the burgh or parish are such that it is the duty of the local authority to take proceedings under this Act therein, the local authority shall take such representation into consideration.

"If the local authority of any burgh or county are of opinion, either after inquiry made in consequence of such representation or otherwise, that there is a demand for allotments for the labouring population in such burgh, or in any parish in such county, and that such allotments cannot be obtained at a reasonable rent and on reasonable con-

ditions by voluntary arrangement between the owners of land suitable for such allotments and the applicants for the same, the local authority, subject to the provisions of this Act, shall by purchase or leasing acquire any suitable land which may be available, whether within or without the said burgh or the said parish, adequate to provide a sufficient number of allotments, and shall let such land in allotments to persons belonging to the labouring population resident in the said burgh or parish and desiring to take the same."

Sec. 13 of the Allotments Act provides for two or more parishes immediately adjoining each other making a joint representation.

3. In the Appendix (pp. 242-248) will be found the provisions of the Allotments (Scotland) Act, 1892, made applicable by sec. 26 (5) of the Local Government (Scotland) Act, 1894, to allotments taken on lease by Parish Councils. These provisions include sec. 6, sub-sec. 4 of which has reference to the proceedings and powers of allotment managers. Sub-sec. 3 of sec. 6 of the Allotments Act, as explained in note 1 to that sub-section, is no longer of any force or effect in landward areas, seeing that by sec. 24 (4) of the Local Government Act, 1894, Parish Councils now exercise the powers and duties of managers in relation to all allotments provided for the parish.

Sec. 9 of the Allotments Act, which provided for the election of allotment managers in a county, is repealed by sec. 55 and Schedule I. of this Act.

4. A local authority of a burgh may provide allotments outwith the burgh. In regard to such allotments the Parish Council or Landward Committee will not, of course, exercise the powers and duties of managers.

(5.) A parish council[1] shall have the same power of presenting a petition with regard to a demand for small holdings in a county as is conferred on any one or more county electors[2] by the Small Holdings Act,

Sec. 24 (5). 1892, and in lieu of the triennial election[3] by the county electors provided by section twenty-four of the said Act, the parish council of the parish in which the holdings are situated shall appoint two representatives from their own number to serve as members of the committee of the county council.

55 & 56 Vict. c. 31.

1. See note 1 to sec. 24 (1).

2. Part I. of the Small Holdings Act, 1892, deals with the provision of small holdings by County Councils. The expression "small holding" is defined by sec 1 (2) to mean "land acquired by a Council under the powers and for the purposes of this Act and which exceeds one acre, and either does not exceed fifty acres, or, if exceeding fifty acres, is of an annual value for the purposes of the income tax not exceeding fifty pounds."

The power conferred on any one or more county electors is contained in sec. 5 of the Small Holdings Act, sub-secs. 1, 2, and 3 of which, as applied to Scotland, provide as follows:—

"(1) . . . Every County Council . . . shall appoint a committee to consider whether the circumstances of the county justify the Council in putting into operation this Part of this Act.

"(2) Any one or more county electors may present a petition to the Council of their county alleging that there is a demand for small holdings in the county, and praying that this Part of this Act may be put in operation, and thereupon the petition shall be referred to the committee appointed under this section, who, on being satisfied that the petition is presented in good faith and on reasonable grounds, shall forthwith cause an inquiry into the circumstances to be made, and shall report the result to the Council.

"(3) If any councillor representing . . . any electoral division of a county in which it is alleged that there is a demand for small holdings is not a member of the committee, he shall be added to the committee for the consideration of the alleged demand." (55 & 56 Vict. c. 31, sec. 5.)

3. See also sec. 24 of the Small Holdings Act, which, as amended by this Act, provides— **Sec. 24 (5).**

"*Modifications as regards management of holdings in Scotland.*

"A committee of a County Council appointed under this Act with respect to the adaptation of land for small holdings, and the sale, letting, and management of the holdings, shall, in Scotland, consist of—

"The county councillor representing the electoral division in which the holdings are situate; and

"Two other members of the County Council; and

"Two representatives appointed from their own number by the Parish Council of the parish in which the holdings are situated; or

"If the holdings are situate within the limits of any burgh, then, instead of the persons elected as aforesaid, two town councillors . . . as the case may be be appointed for that purpose by the Town Council . . . of such burgh."

(6.) A parish council[1] shall have the same power of making any complaint or representation as to unhealthy dwellings or obstructive buildings as is conferred on inhabitant householders[2] by the Housing of the Working Classes Act, 1890. 53 & 54 Vict. c. 70.

1. See note 1 to sec. 24 (1).

2. The powers conferred on inhabitant householders are to be found in sec. 31 (1) and sec. 38 (2) of the Housing of the Working Classes Act, 1890, which must be read in conjunction with secs. 30 and 38 (1). These sections provide as follows—

SECTION 30.

Representation by medical officer of health.

It shall be the duty of the medical officer of health of every district to represent to the local authority of that district any dwelling-house which appears to him to be in a state so dangerous or injurious to health as to be unfit for human habitation.

Sec. 24 (5).

SECTION 31.

Representation on householders' complaint.

(1) If in any district any four or more householders living in or near to any street complain in writing to the medical officer of health of that district that any dwelling-house in or near that street is in a condition so dangerous or injurious to health as to be unfit for human habitation, he shall forthwith inspect the same, and transmit to the local authority the said complaint, together with his opinion thereon, and if he is of opinion that the dwelling-house is in the condition aforesaid, shall represent the same to the local authority, but the absence of any such complaint shall not excuse him from inspecting any dwelling-house and making a representation thereon to the local authority.

SECTION 38.

Power to local authority to purchase houses for opening alleys, &c.

(1) If a medical officer of health finds that any building within his district, although not in itself unfit for human habitation, is so situate that by reason of its proximity to or contact with any other buildings it causes one of the following effects, that is to say—

(*a*) It stops *or impedes*[1] ventilation, or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation or dangerous or injurious to health; or

(*b*) It prevents proper measures from being carried into effect for remedying any nuisance injurious to health or other evils complained of in respect of such other buildings;

in any such case, the medical officer of health shall represent to the local authority the particulars relating to such first-mentioned building (in this Act referred to as "an obstructive building") stating that in his opinion it is expedient that the obstructive building should be pulled down.

(2) Any four or more inhabitant householders of a district may make to the local authority of the district a representation as respects any building to the like effect as that of the medical officer under this section.

1. The words in italics were inserted by Schedule II. of the Housing, Town Planning, &c., Act., 1909.

Sec. 25.

Powers for acquisition of land.

25.—(1.) For the purpose of the acquisition of land by a parish council,[1] the Lands Clauses Acts[2] shall be incorporated with this Act, except the provisions of these Acts relating to the purchase and taking of land[3] otherwise than by agreement.[4]

1. See note 1 to sec. 24 (1).

2. Sec. 23 of the Interpretation Act, 1889, defines the expression "Lands Clauses Acts" to mean as respects Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. cap. 19), and the Lands Clauses Consolidation Acts Amendment Act, 1860 (23 & 24 Vict. cap. 106), and any Acts for the time being in force amending the same.

3. The term "land" includes houses, lands, tenements, and heritages of any description or tenure. (Lands Clauses Act, 1845, sec. 3.)

4. See sub-secs. (4) and (10).

(2.) If a parish council[1] are unable to acquire by agreement, and on reasonable terms, suitable land for any purpose[2] for which they are authorised and desire to acquire it, they may make a representation to the county council, and the county council shall inquire into the representation.

1. See note 1 to sec. 24.

2. A Landward Committee has power to acquire land only for the purposes of this Part of this Act—that is, for public offices, public recreation grounds, rights of way, allotments, and common pasture. (Sec. 24 (1) (*a*), (*b*), and (*c*), and sec. 26 (1).) A Parish Council of a landward parish, however, is not so limited, and it would appear that the provisions of this section could be made use of where land was required for any purpose for which they had the power to acquire it.

(3.) If on any such representation, a county council are satisfied that suitable land for the purpose of the

Sec. 25 (3). parish council cannot be acquired on reasonable terms by voluntary agreement, and that the circumstances are such as to make it proper that the county council should proceed under this section, they shall publish once at least in each of two consecutive weeks in some newspaper circulating in the locality, an advertisement stating shortly the purpose for which the land is proposed to be taken, mentioning a place at which a plan of the proposed works, if any, may be seen at reasonable hours, and stating the quantity of land that is required. Thereafter they shall cause public inquiry to be made in the parish, and notice to be given, both publicly in the parish and severally to the owners, lessees, and occupiers of the land proposed to be taken, either by delivery at, or by post in a registered letter addressed to, the usual or last known place of abode of such owners, lessees, and occupiers, and all persons whose interests would be affected shall be permitted to attend at the inquiry, and to support or oppose the taking of the land.

(4.) After the completion of the inquiry, and after considering all objections made by any persons whose interests would be affected, the county council may make an order for putting in force, with respect to the said land or any part thereof, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.[1]

1. See secs. 17 to 66 of the Lands Clauses Act, 1845.

(5.) If in any case the county council refuse to make such order, the parish council may appeal to the Board, and the Board after local inquiry may make the order,

and this section shall apply as if the order had been made by the county council. Any order made under this sub-section overruling the decision of the county council shall be laid before Parliament.[1] Sec. 25 (5).

1. No such action on the part of the Board has so far been necessary.

(6.) A copy of any order made under this section shall be served by the county council in the manner in which and upon the person or persons upon whom notices in respect of such land are herein-before required to be served,[1] together with a statement that the order will become final and have the effect of an Act of Parliament, unless, within a period of one month after such service, a memorial by some person whose interests would be affected is presented to the Board, praying that the order shall not become law without further inquiry.

1. See sub-sec. 3.

(7.) The order shall be deposited with the Board, who shall inquire whether the provisions of this section have been in all respects complied with; and if the Board are satisfied that this has been done, then, after the expiration of the said period of one month—

(*a*) If no memorial has been presented, or if every such memorial has been withdrawn, the Board shall without further inquiry confirm the order:[1]

(*b*) If a memorial has been presented, the Board shall proceed to hold a local public inquiry, and shall, after such inquiry, either con-

Sec. 25 (7).

firm, with or without amendment, or disallow the order:

(*c*) Upon any such confirmation, the order, and if amended as so amended, shall become final, and have the effect of an Act of Parliament, and the confirmation by the Board shall be conclusive evidence that the order has been duly made, and is within the powers conferred by this Act, and that the requirements of this Act have been complied with.

Provided always that the Board may, and when required within the said period of one month by any party interested who has presented a memorial against the order shall, state a special case on the question whether the proposed order is within the powers conferred by this Act for the opinion of either division of the Court of Session, who are hereby authorised finally to determine the same along with any question of expenses.[2]

1. See Board's 9th Report, 1903, p. xxx., for case in which Board were able to confirm an Order without holding a public inquiry in terms of sub-sec. (7) (*b*).

2. So far it has not been necessary to state a case for the opinion of the Court. Indeed, these provisions have been practically a dead letter. In the one instance referred to, *supra*, in which the Board confirmed an Order, the extent of the land acquired was 30 acres, and the rent £18 9s. 6d. per annum. The legal and other expenses connected with the valuation of this small piece of land amounted to £134 8s. 7d. It was admitted, in answer to a question by Mr. R. L. Harmsworth (Caithness-shire), in the House of Commons, that the expenses were out of all proportion to the magnitude of the transaction, and that a simpler and cheaper procedure was necessary. (Parliamentary Debates, 9th July, 1906, vol. 160, p. 495.)

(8.) Where the Board are authorised, or required, to make any inquiry under this section, they may cause such inquiry to be made by any inspector or officer of the Board, or by any other person specially nominated in writing by the Board,[1] and such inspector or officer or person shall be entitled to summon witnesses, and examine them on oath, and to call for the production of books, documents, and accounts. The costs incurred in relation to such inquiry, including the remuneration of any person specially nominated to hold the same, not exceeding three guineas a day, shall be paid by the county councils and other authorities concerned in such inquiry, or by such of them and in such proportions as the Board may direct, and the said Board may certify the amount of the costs incurred, and any sum so certified shall be a debt to the Board from the county council or authority directed to pay the same. **Sec. 25 (8).**

1. See sub-secs. (11) and (12) and sec. 39 (2). Compare also sec. 11 of the Poor Law Act, 1845, and sec. 8 of the Public Health Act, 1897, by which the Board may appoint Commissioners to conduct special inquiries for purposes other than matters arising under those Acts.

(9.) The order shall be carried into effect by the county council.[1]

1. When carried into effect, however, the initiative of taking action under it rests with the Parish Council.

(10.) Any order made under this section for the purpose of the purchase of land otherwise than by agreement, shall incorporate the Lands Clauses Acts, and section six and sections seventy to seventy-eight

Sec. 25 (10). (both inclusive) of the Railways Clauses (Scotland) Consolidation Act, 1845,[1] with the necessary adaptations: provided that—

8 & 9 Vict. c. 33.

(*a*) Any question of disputed compensation shall be referred to the arbitration of a sole arbiter appointed by the parties, or if the parties do not concur in the appointment of a sole arbiter then, on the application of either of them, by the Board, and the remuneration to be paid to the arbiter appointed by the Board shall be fixed by the Board.[2] An arbiter appointed under this sub-section shall be deemed to be an arbiter within the meaning of the Lands Clauses Acts, and the provisions of these Acts with respect to an arbitration shall apply accordingly; and the arbiter shall, notwithstanding anything in the said Acts, determine the amount of the expenses in the arbitration, and such determination shall be final; and

(*b*) In determining the amount of disputed compensation, the arbiter shall not make any allowance in respect of the purchase being compulsory.

(*c*) The parish council[3] shall make and shall jointly with the proprietor maintain sufficient fences for separating the land taken from the lands not taken.

(*d*) In construing for the purposes of this section any section or Acts incorporated with or

put in force under this section, this Act, together with any order under this section, shall be deemed to be the special Act. Sec. 25 (10).

1. Under the Railways Clauses (Scotland) Consolidation Act, 1845, compensation has to be given not only "for the value of the lands so taken or used," but also for those "injuriously affected by the lands taken or used."

2. In only one instance have the Board been called upon to appoint an arbiter and to fix his remuneration.

3. See note 1 to sec. 24 (1).

(11.) At any inquiry or arbitration held under this section, the person or persons holding the inquiry or arbitration, shall hear any authorities or parties whose interests would be affected, by themselves or their agents, and may hear witnesses, but shall not, except with consent of the Board, hear counsel or expert witnesses.

(12.) A person holding a public inquiry for the purposes of this section on behalf of the county council shall have the same powers as, and may receive remuneration[1] not exceeding that payable to, a person specially nominated by the Board to hold such an inquiry under this section.

1. Sub-sec. 8 provides that the remuneration of any person holding an inquiry shall not exceed three guineas a day.

(13.) The county council or Board, as the case may be, shall not make any order for purchasing the whole or any part of any park, garden, pleasure ground, or other land required for the amenity or convenience of any dwelling-house, or any land the property of a railway company or canal company which is or may

Sec. 25 (13). be required for the purposes of their undertaking, or any land which in the opinion of the county council or Board is being held and may be required for the extension of a factory or public work.

(14.) The county council or Board, as the case may be, shall in making an order for purchasing land, have regard to the extent of land held in the neighbourhood by any owner, and to the convenience of other property belonging to the same owner, and shall, so far as is practicable, avoid taking an undue or inconvenient quantity of land from any one owner.

(15.) Any land acquired under this section shall be vested in the parish council.[1]

1. The Parish Council is a corporate body. (Sec. 32.) The Landward Committee, however, is not, and in a parish partly landward and partly burghal any land acquired under this section must be vested in them. The title should be drawn in favour of A B, chairman of the Landward Committee, and C D, clerk to the Landward Committee, and their successors in office, on behalf of the Landward Committee. In some cases property acquired by a Landward Committee under other provisions of Part IV. is vested in the Parish Council and held in trust by them on behalf of the Landward Committee.

(16.) The expenses of a county council incurred under this section shall be defrayed by the parish council.[1]

1. See, however, sub-sec. (8), *supra*.

(17.) The Board shall in their annual report[1] include a statement of any proceedings under this section.

1. Sec. 8 of the Poor Law Act, 1845, requires the Board to present a report annually to Parliament.

Sec. 26.

Leasing of land for allotments or common pasture.

26.—(1.) A parish council[1] shall have power to take land on lease [2] for allotments or, not exceeding twenty acres[3] in extent, for common pasture, and if they are satisfied that allotments or common pasture are required,[4] and are unable to obtain on lease by agreement on reasonable terms suitable land for allotments or for common pasture, they shall represent the case to the county council, and the county council may, subject to the restrictions in this section, make an order authorising the parish council to take on lease compulsorily for allotments,[5] for a period of not less than ten years nor more than thirty-five years, such land in or near the parish as is specified in the order, and the order shall, as respects confirmation and otherwise, be subject to the like provisions as if it were an order of the county council made under the last preceding section of this Act, and that section shall apply as if it were herein re-enacted with the substitution of taking on lease for purchase, and with the other necessary modifications.

1. See note 1 to sec. 24 (1).

2. See sec. 25 (2).

3. The restriction to 20 acres applies only to common pasture. If a larger provision is required the proper course will be to make a representation to the County Council to put in force sec. 12 of the Allotments Act, 1892. There is no limit to the amount of land that may be taken for allotments.

It is not clear whether the Parish Council are restricted in the choice of persons to whom allotments are to be let. Sec. 2 of the Allotments Act, 1892, prescribes that allotments shall only be let to the labouring population, but that section is not one of the applied sections mentioned in sub-sec. 5 of this Act. It is thought, however, that there was no intention of giving Parish Councils greater

Sec. 26 (1). powers than those possessed by County and Town Councils, and that, therefore, they, too, must be confined to the labouring population, which would seem to indicate the population that make their livelihood by manual labour. The words used in sec. 2 of the Allotments Act are "persons belonging to the labouring population." That would seem to include not only those who labour themselves, but those who belong to the labouring class, as, for example, the widow of a labourer.

The Secretary for Scotland has expressed the opinion that the term "labouring population" means the *landless* labouring classes, and does not, therefore, include crofters, as defined in the Crofters Act, 1886. The definition in the Crofters Act is as follows:—"Crofter means any person who at the passing of this Act is tenant of a holding from year to year, who resides on his holding, the annual rent of which does not exceed thirty pounds in money, and which is situated in a crofting parish, and the successors of such person in the holding, being his heirs or legatees."

Apparently there is no restriction as to the class of persons to whom common pasture is to be let.

The following is a summary of Statutory Conditions relating to parish allotments in Scotland:—

Apart from and besides the conditions contained in the regulations made by the Parish Council and approved by the Secretary for Scotland, the following conditions relative to the letting and holding of allotments provided by a Parish Council are prescribed by statute and are binding on all persons, viz.:—

I. Where in any case it is deemed necessary, the Parish Council may require not more than a quarter's rent to be paid in advance.

(Allotments (Scotland) Act, 1892, s. 7 (1). Local Government (Scotland) Act, 1894, s. 26 (5).)

II. Occupiers' rates and taxes will be paid by the Parish Council, and the amount so payable will be apportioned among the allotment holders and added to their respective rents.

Allotments (Scotland) Act, 1892, s. 7 (2).

III. No allotment holder may sub-let his allotment.

Allotments (Scotland) Act, 1892, s. 7 (3).

IV. Except as mentioned in No. V. below, an allotment holder may not erect on his allotment any building other than a toolhouse, shed, greenhouse, fowlhouse, or pigsty. He will have no claim for compensation in respect of any building, but he will be at liberty to remove before his tenancy expires any toolhouse, shed, greenhouse, fowlhouse, or pigsty which he may have erected; and if he fails to do so the Parish Council may pull down the building and dispose of the materials. Sec. 26 (1).

Allotments (Scotland) Act, 1892, s. 7 (5).

V. In addition to the buildings mentioned in No. IV. above, an allotment holder may, if permitted by the Parish Council, erect on his allotment a stable, byre, or barn. He will have no claim for compensation in respect of any stable, byre, or barn so erected unless (in addition to the permission of the Parish Council) the written assent of the landlord has been given to its erection, but he will be at liberty to remove it on the determination of his tenancy.

Local Government (Scotland) Act, 1894, s. 26 (5), proviso (*b*).

VI. If any building other than as aforesaid is erected on an allotment, it is the duty of the Parish Council to pull it down forthwith, and to sell and dispose of the materials thereof.

Allotments (Scotland) Act, 1892, s. 7 (5).

VII. An allotment holder may before his tenancy expires remove any fruit and other trees and bushes planted or acquired by him, for which he has no claim for compensation.

Allotments (Scotland) Act, 1892, s. 7 (6).

VIII. An allotment holder must not break up any permanent pasture without the permission of the Parish Council, and the Parish Council cannot give such permission without the written assent of the landlord.

Local Government (Scotland) Act, 1894, s. 26 (5), proviso (*c*).

IX. The Parish Council may in certain cases determine a tenancy by one month's written notice, viz.:—

(1.) If rent for the allotment is in arrear for not less than forty days; or

(2.) If it appears to the Parish Council that the allotment holder after three months' tenancy has not

Sec. 26 (1).

duly observed the lawful regulations affecting his allotment, or is resident more than one mile out of the parish.

Allotments (Scotland) Act, s. 8 (2).

In a parish partly landward and partly burghal the question may arise as to whether the Landward Committee have power to deal with allotments on behalf of persons residing within the burgh. There is nothing in the Allotments Act to prevent a Parish Council or Landward Committee letting an allotment to a person outwith the parish, provided that he resides not more than a mile distant (see sec. 8 (2) of the Allotments Act); but, while that is so, it does not appear to have been the intention of the Local Government Act that a Parish Council or a Landward Committee should put the provisions of the Act into operation at the instance of persons residing outwith their jurisdiction. It is obvious that, in the event of any of the expense falling on the special parish rate, such a course would be unfair to the landward ratepayers from whom that rate is levied.

The Parish Council or Landward Committee have no power to deal with applications for allotments, &c., unless such applications are made under sec. 26 of the Local Government Act. If they are made under the Allotments Act, it falls to the County or Town Council to deal with them.

A parish councillor may competently hold an allotment from his Parish Council (sec. 20 (2) (*a*)), but he cannot vote or act in any matter in which he has a pecuniary interest. (Sec. 20 (2) (*a*) (*proviso*).)

4. That is, if there is a general demand for allotments or common pasture. One or two applications might not, for instance, satisfy a Parish Council that it was necessary for them to take action.

5. The omission of the words "or common pasture" appears to be accidental. The effect, however, seems to be to preclude a Parish Council from leasing land compulsorily for common pasture.

(2.) A sole arbiter, who shall be appointed in accordance with the provisions of the preceding section,[1] and to whom the provisions of that section

shall apply, shall have power to determine any question— Sec. 26 (2).

(*a*) as to the terms and conditions of the proposed lease; or

(*b*) as to the amount of compensation[2] for severance; or

(*c*) as to the compensation[2] payable to any tenant in respect of the land taken forming part of any existing tenancy; or

(*d*) as to the apportionment of the rent between the land taken by the parish council[3] and the land retained by the tenant; or

(*e*) as to any other matter incidental to the taking on lease of the land by the council,[3] or the surrender thereof at the end of their tenancy;

but the arbiter, in fixing the rent, shall not make any allowance in respect of the lease being compulsory.

1. See sec. 25 (10).
2. See sub-sec. (3).
3. See note to sec. 24 (1).

(3.) Any compensation awarded to a tenant in respect of any depreciation of the value to him of the residue of his holding caused by the withdrawal from the holding of the land taken on lease by the parish council,[1] shall, as far as possible, be provided for by taking such compensation into account in fixing, as the case may require, the rent to be paid by the parish council[1] for the land taken on lease by them, and the apportioned rent, if any, to be paid by the tenant for

Sec. 26 (3). that portion of the holding which is not taken on lease by the parish council:[1] provided always that during the unexpired period of the tenant's lease the sum *in cumulo* of the apportioned portions of rent shall not be less than the rent formerly paid by the tenant.[2]

1. See note 1 to sec. 24 (1).

2. That is to say, if compensation is awarded to a tenant, it may take the form of the Parish Council paying the whole rent for the holding for the unexpired period of the tenant's lease, or a large proportion of it, instead of a lump sum. The landlord is protected by the proviso that he is not to receive less from the apportioned rents than he received from the tenant alone.

(4.) The award of the arbiter, or a copy thereof, together with a report signed by him as to the condition of the land taken by the parish council,[1] shall be deposited and preserved with the public books and papers of the parish council,[1] and any person interested shall at all reasonable times be at liberty to inspect the same, and to takes copies thereof.

1. See note 1 to sec. 24 (1).

(5.) Save as hereinafter mentioned, sections five to eight inclusive, and section fourteen and the proviso to section twelve of the Allotments (Scotland) Act, 1892,[1] shall apply to any allotment taken on lease by a parish council[2] in like manner as if that council[1] were the local authority and also the allotment managers:

55 & 56 Vict. c. 54.

Provided that the parish council[2]—

(*a*) may let to one person an allotment or allotments exceeding one acre, but, if the land is taken on lease compulsorily, either not

exceeding in the whole four acres of pasture or one acre of arable and three acres of pasture, or not exceeding four pounds in annual value,[3] and

(*b*) may permit to be erected, on the allotment, any stable, byre, or barn:[4] provided that such stable, byre, or barn shall not, unless erected with the assent in writing of the landlord,[5] be the subject of compensation, but may be removed by the tenant on the determination of the tenancy; and

(*c*) shall not break up, or permit to be broken up, any permanent pasture, without the assent in writing of the landlord.[5]

1. The sections of the Allotments Act, 1892, referred to are printed on pp. 242-48.

2. See note 1 to sec. 24 (1).

3. The maximum of £4 does not apply to all cases. There is an alternative limitation. If the Parish Council grant allotments of more than 4 acres of pasture, or 1 acre arable, and 3 acres pasture, such allotments must not be more than £4 in value. If they grant allotments of a greater value than £4, such allotments must not be of greater size than 4 acres pasture, or 1 acre arable and 3 acres pasture. The limitation applies only where the land is taken compulsorily.

4. See sec. 7 (5) of the Allotments Act, 1892, p. 246.

5. *I.e.*, as in the case of sub-sec. (9), the person from whom the Parish Council hold the lease.

(6.) On the determination of any tenancy created by a compulsory lease, a sole arbiter who shall be appointed in accordance with the provisions of the last preceding section and to whom the provisions of that section shall apply, shall have power to determine the

Sec. 26 (6). amount due by the landlord[1] for compensation for improvements, or by the parish council for depreciation.

1. See note 4 to sub-sec. 5, *supra*.

(7.) The order for compulsory taking on lease may apply, with any adaptations[1] which may be prescribed by general or special order of the Board, such of the provisions of the Lands Clauses Acts (including those relating to the acquisition of land otherwise than by agreement) as appear to the county council or Board sufficient for carrying into effect the order, and for the protection of the persons interested in the land and of the parish council.

1. The adaptations of the provisions of the Lands Clauses Acts prescribed by the Board in terms of this sub-section will be found on p. 229. These may require to be modified to suit particular cases, but generally they may be held to be applicable.

(8.) Nothing in this section shall authorise the compulsory taking on lease of any mines or minerals, or confer the right to take, sell, or carry away, any stone, gravel, sand, or clay, or authorise the taking on lease of any land which is already owned, or occupied, as a small holding within the meaning of the Small Holdings Act, 1892, or under the Crofters Holdings Act, 1886, or any Act amending the same.

55 & 56 Vict. c. 31.
49 & 50 Vict. c. 29.

(9.) If the land taken on lease under this section shall at any time, during the tenancy thereof by the parish council,[1] be shown to the satisfaction of the county council to be required by the landlord for the purpose of working and winning the mines, minerals,

Sec. 26 (9)

or surface minerals thereunder, or for feuing for building, or for any road or work to be used in connexion with such working or winning or feuing, it shall be lawful for the landlord of such land to resume possession thereof upon giving to the parish council[1] twelve calendar months' previous notice in writing of his intention so to do, and upon such resumption the landlord shall pay to the parish council[1] and to the allotment holders of the land for the time being such sum by way of compensation for the loss of such land for the purposes of allotments as may be agreed upon by the landlord and the parish council,[1] or, in default of such agreement, as may be awarded by a sole arbiter, who shall be appointed in accordance with the provisions of the last preceding section[2] and to whom the provisions of that section shall apply.

The word "landlord" in this sub-section means the person for the time being entitled to receive the rent of the land taken on lease by the parish council.

1. See note 1 to sec. 24 (1).
2. See sec. 25 (10).

(10.) The Board shall in their annual report[1] include a statement of any proceedings under this section.

1. See note to sec. 25 (17).

Special parish rate may be levied.

27.—(1.) A parish council[1] may for the purposes of this Part of this Act,[2] (including any annual charge, whether of principal or interest, in respect of any loan), levy within the parish[3] a rate not exceeding sixpence in the pound on the annual value[4] of the lands and heritages within such parish,[3] as ascertained for

Sec. 27 (1). the purposes of the Poor Law (Scotland) Act, 1845, in this Act referred to as the special parish rate.

8 & 9 Vict. c. 83.

1. See note 1 to sec. 24 (1). The Parish Council, however, and not the Landward Committee, are the body that levy the rate. See sec. 23 (2) and notes thereto.

2. That is, for the purposes of Part IV., comprising secs. 23 to 29 inclusive. There are, however, other purposes to which the special parish rate may be applied. For instance, expenses incurred by a Parish Council to the Postmaster-General for the purpose of defraying any loss sustained by reason of the establishment or maintenance of postal or telegraphic facilities within the parish are to be charged to the special parish rate—sec. 49 (8) (*g*) of the Post Office Act, 1908. The Landward Committee have no power to give a guarantee under the Post Office Act.

Similarly sec. 79 (1) of the Licensing (Scotland) Act, 1903, empowers a Parish Council (not the Landward Committee) to lodge objections to the grant or renewal of a club certificate. In the event of expenses being awarded against the Parish Council, sec. 79 (4) provides that they are to be paid out of the special parish rate.

In one instance where it was considered unnecessary to levy a special parish rate to meet a loss sustained by the provision of postal facilities, and where it was proposed to defray the expense by subscriptions from private guarantors, the Board held that the proper course was for the Clerk to collect and disburse the sums offered by the guarantors, and enter them in the usual way in the special parish rate account. (9th Report, 1903, p. xxxix.)

3. That is, the landward part of the parish. The special parish rate cannot be levied within a burgh or police burgh, neither is there any power to limit the rate to any particular area of the landward part of the parish. It may, for instance, be necessary to execute repairs on a public way in a remote part of the parish, the expense of which is borne by a rate leviable over the whole landward area.

4. That is, the value as appearing in the valuation roll minus certain deductions under sec. 37 of the Poor Law Act and the Agricultural Rates Act, 1896.

(2.) Such special parish rate shall, subject to the provisions of this Act, be levied and collected[1] along

with, and as an addition to, the poor rate, and with the same remedies and modes of recovery, but in the demand note the special parish rate shall be separately set forth and demanded. Sec. 27 (2).

Provided that, in parishes where no poor rate is levied,[2] or where the poor rate is imposed according to the provisions of a local Act, or according to established usage, such special parish rate shall be levied according to the mode of assessment specified in section thirty-four of the Poor Law (Scotland) Act, 1845.[3]

1. See note to sub-sec. 3.

2. There are only four such parishes in Scotland, viz., Craigie (Ayr), Kettins (Forfar), Kinloch (Perth), and Moonzie (Fife).

3. Sec. 33 of the Poor Law Act, 1845, empowers the Parish Council to raise by assessment the necessary funds for the relief of the poor, and sec. 34, as amended by the Poor Law (No. 2) Act, 1861, provides that one-half of such assessment is to be imposed upon the owners and the other half upon the tenants and occupants of all lands and heritages within the parish according to the annual value. Sec. 35 provides that where an assessment for the poor was imposed according to the provisions of any local Act, or according to any established usage, it should be lawful to continue to impose the assessment according to the rule established by such local Act or usage. Sec. 36 enacts that where one-half of the assessment was imposed on owners, and the other half on tenants and occupants, it shall be lawful for the Parish Council, with the consent of the Local Government Board for Scotland, to determine and direct that the lands and heritages may be distinguished into two or more separate classes, according to the purposes for which such lands are used and occupied, and to fix the rate of assessment upon the tenants and occupants of each class as may seem just and equitable.

Sec. 1 (2) of the Agricultural Rates Act, 1896, however, provides that where lands and heritages have been classified in terms of sec. 36 of the Poor Law Act, 1845, if it shall be certified by the Secretary for Scotland that the rates

Sec. 27 (2). leviable on the occupiers of agricultural lands are less than, or as nearly as may be the same as, the rates which would without classification be leviable on such occupiers in terms of this Act, such classification is to have effect. All other classifications under sec. 36, and established usages under sec. 35, are suspended during the continuance of the Agricultural Rates Act. The special parish rate therefore is levied in every respect the same as the poor rate is directed to be levied by sec. 34 of the Poor Law Act—one-half on owners and one-half on occupiers.

The basis of distribution of the agricultural rates grant was the amount raised during the local financial year ending the 15th day of May, 1896, by each rating authority by means of each rate to which the Agricultural Rates Act applied. Sec. 2 (1).) Parish Councils who happen to have imposed a fairly high special parish rate that year have continued to receive a correspondingly high grant, and have in some cases experienced difficulty in disposing of the surplus, especially as the accumulation of such grant could be applied only to the purposes to which the special parish rate was applicable. Parishes which imposed a small or no special parish rate in 1896 suffered conversely, and have found it necessary to employ the grant in relief of rates to the relief wholly of the special parish rate, a course to which no exception can be taken in an entirely landward parish, but which would be inequitable in a parish partly landward and partly burghal, as the landward ratepayers only would benefit.

(3.) In parishes in which powers and duties are exercised and performed under this part of this Act by a landward committee, such landward committee shall annually,[1] and not later than the twelfth day of June[2] in each year, certify to the parish council the amount, if any, required to be provided by means of a special parish rate, and the parish council shall, as soon as may be, pay to the landward committee such amount.[3]

1. Compare sec. 44 of the Education (Scotland) Act, 1872, which enables the School Board to certify to the Parish

Council the amount of the deficiency in the school fund required to be provided by means of a local rate, and to require them to lay on and assess the same in addition to the poor rate. See also notes to sec. 23 (2) and note 1 to sec. 23 (3). Sec. 27 (3).

2. The intimation to the Parish Council must be given during the financial year when the rate is to be levied, that is, between 15th May and 12th June. (Board's 3rd Report, 1896-97, p. xxix.)

3. The Landward Committee are entitled to receive the amount they certify free of any deductions whatever. The duty of collecting the special parish rate is expressly thrown on the Parish Council, and there is no provision saddling the special parish rate with the cost of collection. (Board's 2nd Report, 1895-96, p. xxvii.) The Landward Committee are not, however, entitled to the share of the agricultural rates grant effeiring to the special parish rate over and above the sum they requisition. (Board's 6th Report, 1900, p. xxxiv.)

No part of the cost of auditing the Parish Council accounts should be charged to the special parish rate.

Borrowing for this part of Act.

28.—(1.) A parish council,[1] acting under this Part of this Act, may, for any of the following purposes, that is to say—

(*a*) for purchasing any land, or erecting any buildings, which they are authorised to purchase or erect; and

(*b*) for any permanent[2] work or other thing which they are authorised to execute or do, and the cost of which ought, in the opinion of the Board, to be spread over a term of years;

borrow money, with the consent of the Board.[3]

1. See note 1 to sec. 24 (1).

2. This section has reference only to works of a regular and permanent character. Temporary overdrafts from the bank, for instance, do not require the Board's consent.

Sec. 28 (1). 3. Application for the Board's consent to a loan should always be made prior to the execution of the work or the purchase of property, &c., as the case may be.

(2.) In parishes where powers and duties under this Part of this Act are exercised and performed by a landward committee, it shall be the duty of the parish council to transmit to the Board any recommendation of the landward committee for the raising of a loan in terms of this section; and, provided the necessary consent be given, to raise the loan accordingly.[1]

1. See note 1 to secs. 23 (2) and 23 (3).

(3.) Any loan under this Part of this Act shall be made on the security of the special parish rate.[1]

1. See sec. 27 (1).

(4.) A county council may lend to a parish council any money which the parish council are authorised to borrow[1] under this Part of this Act, and may, if necessary, raise the money by loan.

1. In most cases Parish Councils will find it to their advantage to borrow from the Public Works Loan Commissioners. If the purpose is one for which the Commissioners will not advance money (see note 1 to sec. 28 (5)), the Parish Council may be able to borrow from the County Council on more favourable terms than from a private lender. Save for this, there does not seem to be any advantage in applying to the County Council.

(5.) A loan[1] raised by a parish council under this section shall be repaid—

(*a*) if for the purchase of land or the erection of buildings, within such period not exceeding forty years; and

(*b*) if for any other purpose, within such period not exceeding thirty years Sec. 28 (5).

as the Board may determine in each case.

1. In only one instance, so far, have the Board consented to repayment of a loan being spread over the maximum period of forty years. The guiding principle is the duration of the work, combined with the financial position of the Parish Council, having regard to existing rates, &c. For instance, in the event of a Parish Council desiring to borrow for the repair of a public way, the repayment of the loan would, unless in exceptional circumstances, be limited probably to five years, that being the time that such repairs may be estimated to last. The tendency now is rather to limit the period of repayment to as short a time as possible where such a course does not impose an undue burden on the ratepayers.

Loans may be obtained by Parish Councils from the Public Works Loan Commissioners where the rateable value of the parish is less than £200,000 for any purpose for which they have power to borrow. In 1906, however, the Loan Commissioners stated that, owing to the limited amount of funds at their disposal, they were obliged to refuse loans to authorities having a larger rateable value than £200,000, except loans to School Boards under the Education (Scotland) Act, 1872 (borrowing powers now extended by sec. 24 of the Education (Scotland) Act, 1908), and it is understood these restrictions are still in force.

The Treasury, by Minute dated 9th September, 1907, have directed that, on loans granted out of the local loans fund on the security of local rates subsequently to 2nd November, 1899, the following rates of interest shall be chargeable:—

Period of Repayment.	Rate of Interest.
Not exceeding 30 years, - -	3½ per cent. per annum.
Not exceeding 50 years, - -	3¾ per cent. per annum.

(6.) A parish council shall pay off every loan under this section, either by equal yearly or half-yearly instalments of principal, or of principal and interest combined,[1] or by means of a sinking fund set apart, invested, and applied in accordance with regulations[2]

Sec. 28 (6). which may from time to time be made, in that behalf, by the Secretary for Scotland.

1. The usual practice in Scotland is to repay loans by the instalment system, *i.e.*, by equal annual instalments of principal, together with interest on the sum remaining unpaid. This method involves a much smaller total payment in respect of capital and interest than repayment by a terminable annuity or by a sinking fund, although the burden imposed by it in the earlier years of repayment is heavier.

2. Regulations as to the repayment of loans by means of a sinking fund have been framed by the Secretary for Scotland, and are printed on p. 310.

Maintenance of public ways.

41 & 42 Vict. c. 51.

29. A parish council[1] may repair and maintain[2] all or any of the public ways (not being highways or footpaths at the side of a highway within the meaning of the Roads and Bridges (Scotland) Act, 1878) within the parish, and the expense of such repair and maintenance shall be defrayed out of the special parish rate, but this power shall not nor shall the exercise thereof relieve any other authority or person from any liability with respect to such repair or maintenance; and such repair or maintenance shall not involve the parish council[1] in any liability for damages[3] to person or property resulting from the condition in which any such way may be maintained.

1. See note 1 to sec. 24 (1).

2. The expression "public way" is not defined, but in practice it embraces all roads or paths (not being highways or footpaths at the side of highways) over which the public have a right of passage. Farm service roads, however, although the public may have or may exercise a right of passage over them, have been held by the Board not to be public ways in the sense of this section. The term "highway" is, to a certain extent, defined in secs. 3, 42, and 58 of the Roads and Bridges Act, 1878. In the opinion of the Right Hon. J. B. Balfour, Q.C., M.P. (2 Co. Co. Cases,

1896, p. 160), a highway or road as used in the Roads and Bridges Act signifies a way passable by all sorts of traffic, including wheeled carriages, and does not include a footpath or a bridle path. The road authority have no jurisdiction over footpaths or roads not fronting part of or being connected with adjoining highways. (See Mr. Balfour's opinion, quoted above, and opinion by the Right Hon. A. Graham Murray, K.C., M.P. (now Lord President), 7 Co. Co. Cases, 1901, p. 87.) The intention of the Legislature seems to have been not to establish a new road authority nor to relieve existing authorities or persons, but to give Parish Councils power to repair such roads and paths as were outwith the jurisdiction of the statutory road authority, and for the maintenance of which no person was responsible. In actual practice, however, Parish Councils have extended the scope of their powers beyond what it is thought was originally contemplated. Speaking generally, the power to *repair and maintain* public ways given by this section implies the restoration and upkeep of what already exists, and does not cover the construction of anything new. For instance, it would not be competent to convert a footpath by "repair" into a carriage road, or to erect a bridge or fence on the line of a public way where no bridge or fence previously existed, save in the exceptional circumstances stated below. There must be some remnant of a similar structure. At the same time, it is impossible to lay down any hard and fast rule, or to indicate precisely the extent of the "repair" which a Parish Council may execute. Many rough cart tracks have been so *repaired* as to make them first-class roads suitable for the road authority to take over as highways. Indeed, it is not an uncommon practice for Parish Councils to enter into negotiations with the road authority with a view to placing on the statutory list of highways the public ways thus repaired, and there would appear to be no objection to such a course.

In the case of *Unst Parish Council* v. *Edmonston*, 24th March, 1910, P.L.M. 1910, p. 178, the Sheriff-Substitute (Broun) of Zetland held that the powers of a Parish Council were limited to "repairing and maintaining" public ways, and that they were not empowered to construct a new road even where a right of way had been acquired in terms of sec. 24 (1) (*c*). It is difficult, however, to reconcile this view with the terms of sec. 24 (1) (*e*), which empower Parish Councils to execute "any works (including works of mainten-

Sec. 29. ance or improvement) incidental to or consequential on" the exercise of any of the powers mentioned in the previous subsections. It is thought that the construction of a road over a portion of ground over which the Parish Council had acquired a right of way would be a work "incidental to or consequential on" the acquisition of the right. It might even be made a condition of the acquisition of the right that a proper road should be constructed.

The fact that repairs have been executed by a Parish Council does not involve any obligation for future maintenance. They are not bound to repair all or any of the public ways; and they are not entitled to enter into litigation for the purpose of determining where public ways are and where they are not, that duty having been given to the District Committee of the County Council. *Hope* v. *Landward Committee of Inveresk*, 13th June, 1906, 8 F. 896; 43 S.L.R. 679; 14 S.L.T. 161; 13 Co. Co. Cases, 43.

Fords have been held by the Board to fall within the expression "public ways" (10th Report, 1904, p. xlv.; 11th Report, 1905, p. xlvii.), and in one or two exceptional cases the Board have permitted the erection of bridges over streams intersecting public ways where no bridge previously existed, there being a ford or stepping stones across the stream at the place where the bridge was to be erected. (11th Report, 1905, p. xlvii.) The erection of a bridge to supersede a ferry-boat was, however, held to be illegal. (8th Report, 1902, p. xxxi.)

Parish Councils are not entitled to cut or trim hedges on the side of public ways save with the consent of the proprietor (Board's 3rd Report, 1896-97, p. xxvi.), nor is it desirable that they should execute repairs without first obtaining his consent. (12th Report, 1906, p. xxxv.) If the public way becomes obstructed by the growth of hedges, and the proprietor refuses either to trim them himself or to allow the Parish Council to do so, the remedy would appear to be a representation to the District Committee under sec. 42 (2).

The Parish Council may assign distinguishing names to any of the public ways within the parish, but they have no power to assign names to streets under the jurisdiction of the road authority, nor have they power to affix numbers to houses. (Board's 5th Report, 1899, p. xxx.)

The proprietor of a road over which the public have a right of passage (*i.e.*, a public way) is entitled to erect swing-gates thereon, so long as they do not interfere with the free-

use of the road by foot passengers (*Lord Donington* v. *Mair*, 31st May, 1894, 21 R. 829; 31 S.L.R. 666; 1 S.L.T. 54), and the Parish Council may contribute towards the expense of renewing such gates if they are exclusively or partly for the convenience of the public, and not exclusively for the convenience of the proprietor and his tenants (Board's 6th Report, 1900, p. xxxii.), or where such gates are to obviate the necessity of fencing the public way. (Board's 11th Report, p. xlvii.)

Encamping on Public Ways, Village Squares, &c.—This question has engaged the attention of many Parish Councils and has been the subject of correspondence with the Board. In the 9th Annual Report (1903, p. xxxii.) a case is recorded where the Board were consulted as to the powers of a Parish Council to prevent showmen encamping with their vans and booths on the public street of a village and on the village square. They had blocked the square to such an extent that coals and other necessaries could not be delivered by vehicles to inhabitants residing in the square. The showmen were receiving all the local benefits in common with the inhabitants, while contributing in no way to the rates. The opinion expressed was to the effect that so long as the Parish Council had not acquired any rights in the square they were not entitled to exercise jurisdiction over it. If, however, the showmen were obstructing what was a public thoroughfare, the Board thought the Parish Council might bring the matter under the notice of the police, and, if they declined to interfere, that it might be considered whether the circumstances would justify a representation to the District Committee under sec. 42 (2). If the proprietors and others having rights in the square were to transfer these rights to the Parish Council, it was thought that they might be in a position to deal effectively with the showmen. Even where proprietors have transferred their rights, considerable difficulty has been experienced in dealing with the matter. Some Parish Councils make regulations and enforce them, and, as a rule, when backed up by the police, the authority of the Parish Council is not disputed. But there is no statutory authority for the Parish Council framing regulations, and there is always a risk in attempting to obtain a conviction. It has also to be borne in mind that in many commons and open spaces certain classes, such as tinkers, showmen, &c., may have vested interests, and, while there probably would not be much opposition to imposing small charges for the

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use of their accustomed stances, it might be unwise to attempt to exclude these people. (Board's 12th Report, 1906, p. xxxvi. *et seq.*) An interesting case is cited on p. xxxvii. of the Board's 15th Report, 1909, in regard to an old road much frequented by these nomadic tribes. One evening the tenant of the adjoining ground, in company with the local policemen, found a man encamped at the side of the roadway, with his wife, seven children, two vans, and some horses. He was asked to remove, but declined, and the matter was reported to the fiscal, who, however, did not see fit to enforce the provisions of the Trespass (Scotland) Act, 1865, as in his view proceedings under that Act would not be competent. The Board, however, brought the matter under the notice of the Crown authorities, who, with a view to testing the case, instructed the fiscal to institute proceedings under sec. 3 of the Act. The accused was brought before the Sheriff, and, pleading guilty, was admonished and dismissed.

Seats on Public Ways.—A Parish Council is not entitled to provide seats on public ways. This is an opinion expressed by the Board (15th Annual Report, 1909, p. xxxviii.) in the knowledge apparently of the case of *Milne* v. *Landward Committee of Inveresk* (see p. 75 *ante*), where it was held that the erection by the Landward Committee of seats on walks intersecting a washing and bleaching ground irrevocably dedicated to the public use was not *ultra vires*.

3. The Parish Council, by reason of repairing a public way, will not be liable for damages in respect of the *condition* of the roadway. If, however, an accident happened through some fault of the servants of the Parish Council there might be liability. No doubt the Parish Council when executing repairs will in most cases do so by contract, but it does not necessarily follow that by such means they escape liability in the event of accident. See *Mitchell* v. *District Committee of Upper Ward of Lanark* (Sheriff Court), 3rd February, 1903, 10 S.L.T. 617; *Eadie* v. *Crieff Town Council*, 26 S.L.Rev. 182; 17 Co. Co. Cases, 92. Reference may also be made to the following cases as bearing on the question of liability of proprietors to keep in repair public paths across their private property:—*Rundle* v. *Hearle*, 23rd May, 1898, 2 Q.B. 83; 5 Co. Co. Cases, 37; *Prentice* v. *Assets Company Limited* (opinion of Lord Kincairney), 21st February, 1890, 17 R. 493; and opinion of counsel (Mr. (now Lord) Dundas), 29th January, 1898, 5 Co. Co. Cases, 94.

PART V.—Parish Trusts.

30.—(1.) When trustees hold any property[1] wholly or mainly for the benefit of the inhabitants of a single parish[2] or any of them, as such inhabitants,[3] or for any public purpose connected with a single parish[2] other than— **Sec. 30.** Powers of parish councils over parish charities and churchyards.

(*a*) for an ecclesiastical charity;[4]

(*b*) for an educational endowment[5] within the meaning of the Educational Endowments (Scotland) Act, 1882; or 45 & 46 Vict. c. 59.

(*c*) for the use or benefit of the poor of the parish within the meaning of section fifty-two of the Poor Law (Scotland) Act, 1845;[6] 8 & 9 Vict. c. 83.

they may transfer[7] the property to the parish council of the parish, or to persons[8] to be from time to time appointed by that council, and the parish council, if they accept the transfer, or persons[8] whom they appoint, shall hold the property on the trusts and subject to the conditions on which the trustees hold the same.[9]

1. See definition of "property" in sec. 105 of the Local Government (Scotland) Act, 1889, as applied by sec. 54 of this Act. In 1907 there were issued as Parliamentary Papers, Returns of all and every sum or sums of money, or other funds or properties, heritable or movable, which had been given, mortified, or bequeathed wholly or mainly for the benefit of the inhabitants, of (1) burghs in Scotland, or any of them, as such inhabitants, or for any public purpose connected with such burghs, and which had become vested in or was administered by Town Councils or any member or members thereof; (2) parishes in Scotland, and which had become vested in or were administered by Parish Councils; (3) parishes in Scotland (excluding the purposes

Sec. 30 (1). excepted from the operation of the above sub-section), and which had become vested in or administered by the kirk session, or heritors and kirk session, or minister of the parish, or the kirk session or deacons' court, or managers or vestry of a congregation belonging to any religious denomination. (See respectively H.C. 328, price 8½d.; H.C. 326, price 7d.; H.C. 327, price 1s. 11d., all issued in the session 1907.)

These Returns contain much useful information, and indicate the extent to which the provisions of this section, so far as relating to Parish Trusts, have been made use of. The Returns show that the annual income derived from the various trusts included therein for the year 1904 was as follows:—

Burghs, - - - - - - -	- £45,517
Parishes (vested in Parish Councils), -	- 5,543
Parishes (vested in Kirk Sessions, &c.), -	16,125
Total, - - - - -	- £67,185

2. Where property is held for the benefit of the inhabitants of more than one parish the Parish Councils of the parishes concerned may, under sub-sec. 4, appoint additional persons to act along with the trustees.

3. The words "as such inhabitants" indicate that the section is applicable only to trusts of a public nature, and then only to such of them as are of a purely parochial description. It may be questioned, for instance, whether a trust for the benefit of the inhabitants of a *burgh* is a *parish* trust in the sense of this section. In dealing with the case of a trust bequeathed in 1868 to "the minister and kirk session of Ardrossan," the funds of which were to be divided "among such needful, deserving, unmarried females or widows as the said minister and kirk session may choose to select, and who shall be resident at the time in my native *town* of Saltcoats," the Board held that the Parish Councils of the parishes of Ardrossan and Stevenston, in which the *town* of Saltcoats was in 1868 and is now situated, were not entitled to representation under sub-sec. 4. That sub-section did not appear to them "to apply to cases . . . where property was held in trust for the benefit of the inhabitants of portions, but not of the *whole* of the parishes." "Had the town of Saltcoats embraced

the whole of these parishes," the Board say, "it might probably have been held that the Parish Councils were entitled to representation, notwithstanding the fact that the word 'parish' was not used in the trust deed." (Board's 16th Report, 1910, p. li.) See note 1 to sec. 30 (4). Sec. 30 (1).

A bequest for the inhabitants of a *county* and a bequest for the *natives* of a parish have been held by the Board not to fall within the provisions of the section. In administering a bequest for the "poor of the parish" the Board advised that it would not be competent for the Parish Council to apply the fund towards the support of poor persons resident in other parishes. In the Board's view "poor of the parish," as applied to the non-legal poor, for which class the bequest was intended, meant the "resident poor." (Board's 13th Report, 1907, p. xxxv.)

By a proclamation of the Privy Council on 29th August, 1863, it was ordained that one-half of the collections taken at the doors of the parish church and otherwise were to be applied for the relief of the poor, and on the passing of the Local Government Act, 1894, the question arose whether the Parish Council were entitled under this section to claim a share of the collections, or to participate in the distribution of them. The Board pointed out (1st Report, 1894-95, p. xiii.) that the Local Government Act did not in any way affect church door collections. "These continue to belong to, and to be within the disposal of, the kirk session, and the Parish Council are not entitled to claim any part of them, or to demand a voice in their application."

Trusts that have fallen to the Crown as *ultimus hæres* have in some cases been handed over by the Treasury to Parish Councils to be administered for the benefit of the inhabitants of the parish. Reference may be made to the estates of the United Society of the Seamen of Montrose and that of the Shipowners' and Shipmasters' Society of Kincardine which were handed over respectively to the Parish Councils of Montrose and Tulliallan. The schemes for the administration of these funds may serve as models for similar transfers, and will be found printed on p. 36 of the Board's 6th Report (1900) and p. 54 of the 7th Report (1901).

An opinion of one of the law officers of the Crown obtained in 1896 as to the effect of an alteration of parish boundaries in the distribution of a trust for the benefit of the inhabitants of a parish as constituted prior to the alteration, is to be

Sec. 30 (1). found in the Board's 14th Report, 1908, p. xxxi. It is in the following terms:—

"The question is, what is the effect of the transference of the portion of the parish A to the parish B as regards the rights of the inhabitants of the transferred portion to be potential beneficiaries of the trust?

"I view this as a very difficult question, but to the best of my judgment I have come to the conclusion that it has no effect; or, in other words, that the persons living in the detached district are still potential beneficiaries.

"The effects of a disjoining and annexing order are stated in sec. 49 (1) of the Act of 1889, and in practically the same terms in sec. 46 of the Act of 1894, and they are—'Such alteration shall have effect for all purposes, whether County Council, justices, sheriff, militia, Parochial Board, School Board, local authority, *or other*, save as hereinafter mentioned.'

"Now, no doubt, the words 'or other' in one sense are wide enough to cover everything. Yet I think that here the '*ejusdem generis*' rule of construction would apply, and that it would be limited to *public purposes*. In accordance with this view, I have already advised the Board, without difficulty, that questions of settlement will be determined according to the new, and not the old, parochial situation. But here we are dealing with the bounty of a private individual, expressed in a will which speaks at the date of a testator's death, and I think his bounty was intended for the parish of A as he knew it, and that there was no intention in the Local Government Acts to interfere with the scope of charities."

In the case of *Bo'ness and Carriden Parish Council* v. *Bo'ness Kirk Session* the defenders argued that the pursuers had no title to sue in respect that they are the Parish Council, not of Bo'ness alone, but of Bo'ness and Carriden (the two parishes having been amalgamated by order of the Secretary for Scotland), and that the properties in question were held in trust for the inhabitants of the parish of Bo'ness alone. *Held* that the plea of no title must be repelled. 16th November, 1898, 6 S.L.T. 187; P.L.M., 1899, 25.

4. See definition of ecclesiastical charity in sec. 54. In the case of the "Bruce Bequest," which is for the poor of the Presbytery of Deer, and the funds of which are directed to be applied by the kirk sessions among the poor in their

respective parishes "to Christians, but excluding Roman Catholics," it was contended that the bequest fell within the definition of ecclesiastical charity. The Board, however, expressed the opinion that, as the bequest was not for the benefit of the members of any particular church, it did not fall within the definition. (14th Report, 1908, p. xxx.) Sec. 30 (1).

Lands purchased with money taken from the "poor's box," the rents of which were mainly applied for the benefit of the poor, but were to some extent applied to ordinary church purposes connected with the parish, were held not to be an "ecclesiastical charity," and consequently their management fell to be transferred to a committee appointed under sec. 30 of the Act. *Parish Council of Bo'ness and Carriden* v. *Kirk Session of Bo'ness*, 22nd February, 1900, 2 F. 661; 37 S.L.R. 472; P.L.M. 1900, 314.

A kirk session acquired lands in 1720 "in name and for behoof of the poor members of Jesus Christ residing in the parish," and in 1767 acquired other lands "as trustees for the use and behoof of the poor of the said parish." Held that the trust was not an ecclesiastical charity within the meaning of the Local Government Act, and that neither lands fell under the operation of the 52nd section of the Poor Law Act, 1845, but fell to be administered in terms of sec. 30 of the Local Government (Scotland) Act, 1894. *Auchtergaven Parish Council* v. *Auchtergaven Kirk Session*, 9th August, 1901 (O.H.); P.L.M. 1901, 546.

The following note of cases decided in the English Courts is taken from 6 S.L.T. (10th December, 1898) 141:—

An ecclesiastical charity is defined in England, *inter alia*, as "for the benefit of any particular church or denomination." (Local Government Act, 1894, sec. 75 (2) (*e*).) In Scotland an ecclesiastical charity is defined, *inter alia*, as "for the benefit of any particular church or denomination, or of any members thereof as such."

I. Ross's Charity provided that clothing was to be distributed among six poor old widows by the churchwardens of a parish, with preference to those who, not being disabled by infirmity or sickness, were most constant in their attendance on the public service of the church. Held that this was not an ecclesiastical charity.

II. Under Perry's Almshouses the charity was for the benefit of old parishioners of W., "who (not being prevented by sickness or some urgent cause) shall have attended divine service at the church of the parish of their respective

Sec. 30 (1). residences, for the time being, every Sunday for the last five years of their respective lives, and been partakers of holy communion, and lived a godly, righteous, and sober life, to the glory of God's holy name." Held that this was an ecclesiastical charity. Court of Appeal (Lindley, M.R., Chitty and Vaughan Williams, L.JJ.), 17th November, 1898.

5. "Educational endowment" is defined as follows in the Educational Endowments (Scotland) Act, 1882:—

"'Educational endowment' shall mean any property, heritable or moveable, dedicated to charitable uses, and which has been applied or is applicable in whole or in part, whether by the declared intention of the founder, or the consent of the governing body, or by custom or otherwise, to educational purposes, but shall not, except with the consent of the governing body, include the funds, whether capital or revenue, of any incorporation or society contributed or paid by the members of such incorporation or society by way of entry moneys or other fixed or stated payments, nor burgess fines paid to any such incorporation or corporate society except as hereinafter provided:

"'Governing body' shall mean the managers, governors, or trustees of any endowment or other persons having the administration of the revenues thereof:" . . .

6. Sec. 52 of the Poor Law Act provides as follows:—

"Where any property whatsoever, whether heritable or moveable, or any revenues, shall at the time of the passing of this Act belong to or be vested in the heritors and kirk session of any parish, or the magistrates, or magistrates and town council of any burgh, or commissioners, trustees, or other persons on behalf of the said heritors and kirk session, or magistrates, or magistrates and town council, under any Act of Parliament, or under any law or usage, or in virtue of gift, grant, bequest, or otherwise, for the use or benefit of the poor of such parish or burgh, it shall, from and after a time to be fixed by the Board of Supervision, be lawful for the parochial board of each such parish, or of the combination in which such parish or burgh may be respectively, to receive and administer such property and revenues, and the right thereto shall be vested in such parochial board; and the said heritors and kirk session, magistrates, town council, commissioners, trustees, or other persons are hereby authorised and required either to continue to hold all such

property and revenues for the behoof of such parochial board, or to make, grant, subscribe, and deliver such dispositions, assignations, and conveyances of all such property and revenues as may be necessary to enable such parochial board to administer the same for behoof of the poor of such parish or combination." **Sec. 30 (1).**

Some doubt existed whether bequests for the "poor of the parish" made to Parochial Boards and Parish Councils under sec. 30 of the Local Government Act, or without reference to any statute, were also to be confined to the legal poor, and a special case on behalf of the Parish Council of Kinloss was presented for the opinion and judgment of the Court of Session. (See *Parish Council of Kinloss and Others*, 22nd November, 1907, S.C. 1908, 192; 15 S.L.T. 601; P.L.M. 1908, 85.)

The decision is of considerable importance in respect that it removes not only any doubt as to the power of the Parish Council to assist from such funds persons not in receipt of parochial relief, but shows that to apply such funds to the relief of the rates, as many Parish Councils were in the habit of doing, is illegal. Following on that decision the Board issued a circular (5th February, 1908) to all Parish Councils, pointing out that trusts similar to those in the Kinloss case were to be administered "not for the relief of the rates, but—as was unquestionably the intention of the donor—for the benefit of necessitous persons, whether in receipt of parochial relief or not." If the Parish Council, in their discretion, decided to apply the funds to the legal poor, the Board indicated "that such benefits must be in addition to, and not in substitution for, the ordinary statutory aliment to which such poor are entitled from the rates." Compare also *Paterson's Trustees* v. *Christie*, 1st February, 1899, 1 F. 508; 36 S.L.R. 384; 6 S.L.T. 301, where it was held that money left in trust for the "poor or needful" of a district might be applied for the benefit of poor and needful persons, whether they were or were not in receipt of or entitled to parochial relief. A case is referred to in the Board's 11th Report, 1905, p. xlii., where Parish Councils were called as defenders in an action of multiplepoinding raised by the executrix-dative to obtain judicial exoneration in connection with a legacy for the benefit of the poor, the testator having omitted to appoint trustees or executors or any machinery for carrying the legacy into effect. The claims of the Parish Councils were rejected by the Sheriff on the ground that they

Sec. 30 (1). had no title to the legacy, they being the guardians of the legal poor only. See also *Murray* v. *Gill's Executors*, 1891, 29 S.L.R. 173.

In considering the question whether the judgment in the Kinloss case applied to trusts transferred in terms of sec. 52 of the Poor Law Act, the Board stated that it was with regret that they had to advise that it did not apply, and consequently that such funds must be confined to the legal poor. Unless the principle of the Kinloss judgment was further explained and extended, they did not think they would be justified in taking any other view. (Board's 14th Report, 1908, p. xxx.)

See also the case of *Auchtergaven Parish Council* v. *Auchtergaven Kirk Session*, referred to on p. 119.

7. The Board obtained an opinion from the Law Officers of the Crown as to the extent of the transfer of trusts effected by the various sub-sections of sec. 30. The Law Officers advised—(1) That in cases under sub-sec. 1 there is an absolute transference, which should be appropriately carried out by transference of title. (2) That under sub-secs. 2, 3, and 4, there is not absolute transference, and that it follows that the title remains, and in case of new or altered investments falls to be taken in the name of the original body of trustees. (3) That the *choice* of an investment is an act of management, and as such falls to be determined in cases under sub-sec. 3 by the Joint Committee. (4) That the custody of the security writs should remain with the owners, subject, of course, to a right of inspection and use, whenever necessary, by the managing body. (1st Report, 1894-95, p. xiii.)

Whether a formal deed is necessary in every case of a transfer of property to the Parish Council depends on the nature of the property transferred. In the case of heritable property nothing short of a formal conveyance will suffice. In the case of movable property, on the other hand, a minute of transfer and a minute of acceptance might be sufficient. (1st Report, *ibid.*, p. xiii.) See, however, note 2 to sec. 30 (6) as to the transference of churchyards.

Property may be transferred under this sub-section notwithstanding that the provisions of sub-secs. 2 or 3 may have been put in operation in regard thereto.

The Parish Council have no power to expend the rates on trusts transferred under this section, or to apply any portion of them to meet deficiencies arising on the income of any

trust. It is of importance, therefore, that only such trusts as may reasonably be expected to be self-supporting should be accepted. For instance, it would be inadvisable to accept the transfer of a public recreation ground or a burial ground if it were necessary to rely on the rates for support. The proper course rather would be to accept the former in terms of sec. 24 (1) (*d*), and to resolve to provide the latter by accepting it in terms of secs. 9 and 12 of the Burial Grounds Act, 1855. The expense of maintenance would then, of course, fall on the special parish rate and the burial grounds rate respectively. **Sec. 30 (1).**

Expenses in connection with the change of an investment form a charge not on the rates, but on the trust funds. (Board's 15th Report, 1909, p. xxxvi.)

Trustees have been held liable for not having so invested the trust funds as to produce a fair revenue. Placing money on deposit receipt is not an investment, and trustees may be called on to make good the difference between deposit and ordinary investment rates. *Held* that 3 per cent. was a fair rate of interest. *Melville* v. *Noble's Trustees*, 11th December, 1896 (Sec. Div.), 24 R. 243; 34 S.L.R. 210; 4 S.L.T. 198.

Bank stock, save that of the Bank of England, not being one of the securities authorised by the Trusts (Scotland) Amendment Act, 1884, the Board advised a Parish Trusts Committee that they would not be altogether free from responsibility in retaining trust funds in Scottish bank stock. (12th Report, 1906, p. xxxiv.)

Parish Councils and all bodies corporate appear to be liable for income tax on the income derived from trust funds, although such income may not exceed £160 per annum. (12th Report, *ibid.*)

The enactment in sub-sec. 9 limiting the application of the provisions with respect to the appointment of trustees does not affect the provisions of sub-sec. (1) as to transfer, nor does it preclude the trusts referred to in sub-sec. 9 from being transferred to the Parish Council. (Board's 1st Report, 1894-95, p. xiii.)

8. It would appear to be competent for the Parish Council to delegate their powers under this sub-section to any persons whom they may think fit, not necessarily members of the Parish Council.

9. The Parish Council are not entitled to charge the rates

Sec. 30 (1). with the expense of administering trusts transferred to them under sec. 30 (1). Such expenses form proper charges against the trust funds. (Board's 10th Report, 1904, p. xlii.) The powers of the Parish Council do not extend beyond those of the trustees who formerly held the property. (See note 7, *supra*.)

(2.) In the event of any such property not being transferred to the parish council[1] under and subject to the provisions of the preceding sub-section, the parish council of the parish concerned may from time to time appoint such number of additional persons[2] to act along with the trustees of the said property, as the trustees and the parish council may agree upon, or in default of such agreement as may be approved by the Board[3] in each case: provided that where the trustees of any such property are elected[4] by, or include persons elected by, parish electors or inhabitants of the parish, or are members of the county or town council, *or are burgh commissioners*,[5] the provisions of this sub-section shall not apply unless the Board by order so prescribe.

1. Or to persons to be from time to time appointed by that Council. See sub-sec. (1).

2. The status of additional persons so appointed is not ancillary to that of the original trustees, except that they are trustees *qua* management only. Where the original trustees were the moderator and kirk session of the Established Church, it was argued that the moderator was entitled to take the chair at all meetings of the trustees. The view taken by the Board, however, was that the effect of appointing additional persons to act along with the moderator and kirk session as trustees was to constitute a new body of trustees for the management of the trust, and that the appointment of a chairman lay with the augmented body, the additional persons having, in the appointment of a chairman, the same rights and privileges as the original trustees. (Board's 11th Report, 1905, p. xli.)

A representative of a Parish Council on a trust is entitled to report the proceedings of the trustees to his Parish Council, and the Parish Council are at liberty to discuss the report of their representative. (Board's 3rd Report, 1896-97, p. xxviii.) **Sec. 30 (2).**

A Parish Council, having been engaged in an expensive though successful litigation in connection with their claim for representation on a parish trust, were in difficulty as to the means by which they were to defray the expenses, there being no power to borrow for the purpose. The Board indicated that they would raise no objection to the money being obtained from the bank, and to repayment being spread over two or three years. (9th Report, 1903, p. xxviii.)

3. The Board have no duty unless there is a failure to agree. Compare sub-sec. 3.

4. *I.e.*, elected to the office of trustee. This proviso has not the effect of bringing within its scope all trusts on which there is already a local representative. For instance, a member of a School Board, if a trustee, although elected by parish electors, would not bring the trust which he represented within the proviso. If, however, the terms of the trust provided that the chairman of the School Board were to be *ex officio* a trustee, the proviso would apply, and the Parish Council would not be entitled to appoint a representative unless the Board by order so prescribed.

5. Trusts upon which there may be a proportion of members of the County or Town Council do not fall within the terms of the proviso. It applies only to those trusts upon which the trustees are *all* members of the County or Town Council. The words in italics are spent—see sec. 5 of the Town Councils Act, 1900. In short, sub-sec. 2 applies to all trusts for the benefit of the inhabitants of single parishes (save those excepted by the provisions of sub-sec. 9) not transferred under sub-sec. 1 or falling either under the terms of the proviso or the provisions of sub-sec 3.

The proviso, of course, applies only to trusts falling under this sub-section, and cannot be extended so as to exclude the operation of sub-sec. 3 in cases to which the latter sub-section applies.

In the appointment of Parish Council representatives the practice of the Board is to leave the original trustees with a majority, but cases have occurred in which for various

Sec. 30 (2). reasons they have deemed it desirable to depart from this rule, and give an equal or even larger representation to the Parish Council.

(3.) Where the trustees of any such property are the kirk session,[1] or the heritors and kirk session, of any parish, or the kirk session or deacons' court, or managers, or vestry of a congregation belonging to any religious denomination to the number, whether alone or conjoined with others, of not less than six persons,[2] the said trustees shall[3] from time to time appoint certain of their own number,[4] not exceeding three, and the parish council of the parish shall[3] from time to time appoint such number of additional persons[5] as the Board may in each case approve, to act together as a committee of management[6] of the said property, and such management[6] shall be transferred to the committee accordingly.

1. The question has arisen whether in the case of trusts left to the "minister and kirk session" the minister is entitled to be regarded as a trustee independently of his position as moderator of the kirk session. The expression does not, however, appear to involve that any separate and independent right is vested in the minister apart from what belongs to him as a member of the session.

2. If the trustees number less than six, sub-sec. 2 will apply.

3. The terms of this sub-section are imperative, and not optional, as in sub-secs. 1, 2, and 4.

4. The trustees are confined to the appointment of persons, not exceeding three, *from their own number*. There is no such restriction on the Parish Council. Compare note 8 to sub-sec. 1.

5. See note 2 to sub-sec. 2.

6. See note 7 to sub-sec. 1. The Parish Council have no duty in regard to trusts administered by Joint Committees. The audit of the accounts and all matters pertaining to the conduct of the business of the trust are for

the Joint Committee themselves to determine. They will require to appoint a clerk, but they are under no obligation to employ either the session clerk or the clerk to the Parish Council, but the former, as representing the original trustees, should call the first meeting of the Joint Committee. Sec. 30 (3).

It is not competent for a Joint Committee to re-transfer funds to the kirk session. (Board's 10th Report, 1904, p. xliii.)

(4.) Where trustees hold any property for the benefit of the inhabitants of, or for any public purpose (other than as hereinbefore mentioned) connected with, two or more[1] parishes, the parish councils of the parishes concerned may, if the Board so decide, from time to time appoint, in such manner or rotation and subject to such conditions as may be prescribed in any order of the Board, such number of additional persons[2] to act along with the trustees of the said property as may be approved by the Board in each case.

1. Sub-secs. 1, 2, and 3 are applicable only to single parishes. It is important to observe that the words "or any of them as such inhabitants," which occur in sub-sec. 1, are omitted in this sub-section. Such omission strengthens the view that the sub-section does not apply to trusts that are for the benefit of the inhabitants of only a section of two or more parishes. See the Saltcoats case referred to in note 3 to sub-sec. 1.

In the event of an alteration of parish boundaries whereby a portion of one parish may be disjoined and annexed to a neighbouring parish difficulties have arisen as to the right of the inhabitants of the disjoined portion to continue to participate in the benefits of trust funds applicable to the parish of which the disjoined portion formerly was part. It would seem, however, from the opinion quoted in note 3 to sec. 30 (1) that the effect of such an alteration of boundaries would be to bring the trust funds under this sub-section as property connected with "two or more parishes."

2. See note 2 to sec. 30 (2).

Sec. 30 (5). (5.) The term of office of a trustee[1] appointed under this section shall be not longer than three years, but a trustee shall hold office until his successor is appointed, and shall be eligible for re-appointment.[2]

1. The term "trustee," as used here, would appear to be confined to persons that may be so appointed by Parish Councils under sub-sec. 1, and to any "additional persons" appointed under sub-secs. 2, 3, and 4. The term of office of the original trustees is not, of course, affected.

2. An "additional person" appointed by a Parish Council as trustee from their own number would therefore be eligible for reappointment whether he retained his seat as a Parish Councillor or not. The persons, however, selected by the original body of trustees to act on a Joint Committee of Management under sec. 30 (3) will cease to act as trustees when they cease to belong to the office from which they derive their qualification as trustees.

(6.) The heritors[1] of any parish may transfer[2] the property of any churchyard which they hold to the parish council, and the parish council, if they accept such transfer, shall thereafter hold such churchyard for the same purposes and subject to the same rights[3] for and subject to which it was held by such heritors, and shall have and may exercise and perform all the powers and duties before such transfer vested in or imposed on such heritors in relation to the churchyard transferred (except any power or duty of enlarging or extending such churchyard and assessing for the cost of such enlargement or extension):[4] provided that the costs of maintenance and management of such churchyard after such transfer shall, if and so far as they require to be defrayed out of any rate, be a charge upon the poor rate:[5] and provided also that

such transfer shall not alter or transfer any liability to assess for the repayment of any debt or the incidence of any assessment levied for such repayment.[6] After such transfer the powers and duties transferred shall no longer be exercised and performed by such heritors. Sec. 30 (6).

1. Churchyards under the control of bodies other than the heritors cannot be transferred under this section. They may, however, be acquired by Parish Councils under the provisions of the Burial Grounds (Scotland) Act, 1855. (See Board's 9th Report, 1903, p. xxxiii.)

2. A legal conveyance is not necessary to the transfer of a churchyard under this section. A minute of the heritors agreeing to transfer and a minute from the Parish Council agreeing to accept the churchyard would probably be sufficient. The Board suggest, however, that it might be advisable for the Parish Council to obtain from the heritors an undertaking to execute a conveyance should such be required. (4th Report, 1898, p. xxvii.) Compare note 7 to sec. 30 (1).

Where it was proposed to make a joint transfer to two Parish Councils, and for one of the Parish Councils to contribute towards the cost of upkeep, the churchyard being situated in the other parish, the Board stated that they saw no objection to the proposal. (10th Report, 1904, p. xlvi.)

The acceptance of a transfer of a churchyard under this sub-section has been held by the Board to be a sufficient compliance with the requirements of the Burial Grounds Act, provided the churchyard met the conditions in the Burial Grounds Act (secs. 9 and 10) as to suitability and convenience. (12th Report, 1906, p. xli.)

In one instance where the heritors proposed to hand over a churchyard and a piece of land as a new burial ground, the latter not being contiguous to the old ground, the Board advised the Parish Council not to proceed under the Local Government Act, but to resolve to provide a burial ground under the Burial Grounds Act, and in fulfilment of that resolution to accept a transfer of the two grounds. The advantage of this course was that it kept all burial ground expenditure under one rate, and if it were necessary to borrow for laying out the new ground the Parish Council had the

Sec. 30 (6). power under the Burial Grounds Act, which they would not have under the Local Government Act. (10th Report, 1904, p. xlvi.; 12th Report, 1906, p. xl.) The consent of the Board to loans under the Burial Grounds Act is not required, save in the circumstances set forth in sec. 38 (1) of the Local Government Act, 1894.

A Parish Council are not entitled to take over a churchyard encumbered by a feu-duty, as the payment of the feu-duty could not be defrayed by the Parish Council as part of the "maintenance and management" of the churchyard. Nor would it be competent, in the Board's opinion, for the Parish Council to purchase such a churchyard under the provisions of the Burial Grounds Act, and thereby relieve the heritors of the obligation of paying the feu-duty, which they are bound to discharge. The Board do not favour ground being taken on feu for burial ground purposes, unless no other course is open, and in that event they recommend that a sinking fund, equal to one-twentieth of the capitalised value of the feu-duty, should be annually set aside so that at the expiration of a period of twenty years (the term prescribed by the Burial Grounds Act for the redemption of debt) the accumulations of the sinking fund would be sufficient to redeem the feu-duty or the interest on said accumulations sufficient to meet the annual charge for feu-duty. (14th Report, 1908, p. xxxiii.; 12th Report, 1906, p. xlii.; 5th Report, 1899, p. xxviii.)

3. The powers of Parish Councils do not extend beyond those possessed by the heritors. The extent of the powers of the latter body is frequently a matter of some doubt. Among others, the question has arisen as to the right to charge for lairs in a parish churchyard. The sale to one who is neither a heritor nor a parishioner appears to be incompetent. (Duncan's "Parochial Ecclesiastical Law," 208.) In Black's "Parochial Ecclesiastical Law" (3rd edition, 106) it is stated that "Heritors were not entitled to charge for lairs," apparently whether parishioners or not, and the Board have also expressed the same opinion. (4th Report, 1898, p. xxvii.) The basis for that opinion seems to be that every parishioner is entitled to burial in the parish churchyard (so far as there is accommodation) without payment for the ground. (Duncan's "Parochial Ecclesiastical Law," 183; see also 14 S.L.Rev. 145.)

The Parish Council may impose such terms and conditions as they see fit for the burial of non-parishioners in churchyards under their control. It is a common practice to charge higher fees for interments in the case of non-parishioners. **Sec. 30 (6).**

4. It seems clear from the words bracketed in the section that it was not the intention to relieve the heritors of their duty to provide sufficient burial ground accommodation for the parish. It is sometimes difficult, however, to know where the duties of the heritors terminate, and where those of the Parish Council begin, especially having regard to the provisions of the Burial Grounds Act, 1855. This sub-section of the Local Government Act expressly provides that the duty of enlarging or extending a churchyard and assessing for the cost of such enlargement or extension is to remain with the heritors, and yet there is no reason why a Parish Council should not proceed under sec. 9 of the Burial Grounds Act, 1855, to provide ground which may, of course, be contiguous to the parish churchyard. Not only so, but in the event of a parish churchyard being closed by Order in Council under sec. 4 of the Burial Grounds Act, the Parish Council are bound to take action under sec. 10 of that Act, and provide a suitable and convenient burial ground for the parish. The Board in their 11th Annual Report (1905, p. xlix.) point out that "it too often happens that Parish Councils fail to recognise their duties in the matter, or that they unduly delay taking the necessary steps towards providing new ground." A case is referred to where a Parish Council refused to proceed under the Burial Grounds Act, as in their view the duty to provide new ground lay with the heritors. Ultimately the churchyard was closed by Order in Council, and the Parish Council had not only to secure with undue haste a new site for a burial ground, but to accept the responsibility of finding burial ground accommodation for persons dying in the interval. The question arose whether, under sec. 10 of the Burial Grounds Act, the Parish Council were allowed six months from the date of closing of the churchyard before they could be compelled to provide accommodation, but the Board advised that the six months referred to in sec. 10 did not relieve the Parish Council of responsibility for difficulties that might arise owing to the want of proper accommodation. The Parish Council should have taken steps either to provide a new burial ground before the closing Order was pronounced, or should have

Sec. 30 (6). applied to have the date of closing fixed at such a time as would have enabled them to have fulfilled that obligation.

The Board doubted the competency of a Parish Council seeking to restrict the number of interments in a parish churchyard by imposing certain charges. (Board's 14th Report, 1908, p. xxxiii.)

The Parish Council of Fowlis Easter were interdicted from cutting the grass in the parish churchyard, that being a perquisite of the minister of the parish. *Burr* v. *Parish Council of Fowlis Easter*, May, 1898. See also Black's "Parochial Ecclesiastical Law" (3rd edition), p. 171; and Duncan's "Parochial Ecclesiastical Law," p. 207.

5. The reason for charging the poor rate with the expense of managing and maintaining churchyards is not obvious. It would have been more convenient to have charged such expenses to a burial grounds rate, and thus to have brought both churchyards and burial grounds under one rate, and, as far as possible, under one authority. In the event of a Parish Council providing ground under the Burial Grounds Act contiguous to a churchyard transferred to them, under this sub-section, the one falls to be maintained under the burial grounds rate and the other under the poor rate, and as one set of officials is usually employed to look after both, the necessary division of expenses is apt to lead to confusion.

Parish Councils are under no obligation to keep tombstones in repair, and, where the owners or representatives are available, they ought not to do so. But cases may arise where monuments fall into disrepair, and the representatives of the persons commemorated are unable to pay for their restoration, or cannot be traced, and the seemly aspect of the churchyards is liable to be disagreeably affected by masses of decaying stone. In such circumstances the restoration or even removal of the tombstones might reasonably be considered as part of the maintenance and management of the churchyard, the expense of which would form a legitimate charge on the rates. (Board's 12th Report, 1906, p. xli.)

There is no power to borrow for expenses under this section. In one case where it was proposed to borrow for a caretaker's house the Board advised the Parish Council to apply a sum they had at the credit of the poor rate account, and to meet the balance by a temporary overdraft from the bank.

6. See, however, sec. 16 of the Burial Grounds (Scotland) Act, 1855, which provides that in the event of a burial ground being closed by Order in Council the whole burdens upon and liabilities attaching to it shall be transferred to and become burdens upon the burial ground provided in room thereof.

Forms of registers and other books recommended by the Board to be used by Parish Councils in connection with churchyards and burial grounds are printed in the Appendix, p. 223.

(7.)[1] The Board may by order prescribe rules[2] (1) as to the form in which the accounts[3] of any property dealt with in this section shall be kept, and (2) as to the publication of the said accounts.[3]

1. See sec. 35 (2).

2. No rules have so far been prescribed by the Board.

3. The accounts of all trusts vested in or managed by the Parish Council must be audited by the auditor appointed by the Board in terms of sec. 36. He has no jurisdiction, however, over trusts managed by a Joint Committee under sub-sec. 3 or by an augmented body of trustees under sub-secs. 2 and 4. Separate books and accounts should be kept for each trust. See note 4 p. 142 and Appendix p. 293.

(8.) Whilst a person is trustee[1] of any property or revenues falling within the provisions of this section, he shall not, nor shall his wife or any of his children, receive any benefit therefrom.[2]

1. The term "trustee" includes an "additional person" appointed by a Parish Council. See note 2 to sec. 30 (2) and note 2 to sec. 30 (9).

2. This sub-section merely repeats the rule of common law that no trustee shall receive any benefit from the trust under his charge.

(9.) The provisions of this section[1] with respect to the appointment of trustees[2] shall not apply to any charity[3] until the expiration of forty years from the

Sec. 30 (9). date of the foundation[4] thereof, or, in the case of a charity[3] founded before the passing of this Act by a donor, or by several donors, any one of whom is living at the passing of this Act, until the expiration of forty years from the passing of this Act, unless with the consent of the surviving donor or donors.

1. See last par. of note 7 to sec. 30 (1).

2. See note 2 to sec. 30 (2). The "additional persons" to be appointed by Parish Councils are here clearly designated "trustees." See note 2 to sec. 30 (2).

3. The expression "charity" is not defined. The term, which occurs only in this sub-section, has given rise to the question whether a "property," which may not necessarily be of the nature of a "charity," is affected by these provisions. It is not thought, however, that any distinction can be drawn between the terms "property" and "charity," and that the provisions of the section with respect to the appointment of trustees in the case of all property, whether of the nature of a charity or not, will be limited by the provisions of this sub-section.

4. The date of the foundation of a charity is the date of the testator's death, even where the funds or property bequeathed are subject to a liferent, and the *charity* does not become operative till some time after the death of the testator. *M'Kune's Trustees* v. *M'Kerrow* (O.H.), 14th May, 1908, 16 S.L.T., p. 18.

PART VI.—Supplemental.

Use of schoolrooms.

31.[1] The parish electors[2] on the application of not fewer than six of their number and the parish council (including a landward committee) shall be entitled to use, free of charge, at all reasonable times, except during ordinary school hours, and after reasonable notice, for any purpose under this Act, or under the

Poor Law (Scotland) Act, 1845, the Education Acts, or the principal Act, including public meetings in connection with the candidature of any person for the county council or the parish council, any room in a school[3] receiving a grant out of moneys provided by Parliament, and any room[4] the expense of maintaining which is payable out of any rate levied by the parish council. Sec. 31. 8 & 9 Vict. c. 83.

Provided that this enactment shall not authorise the use of any room used as part of a private dwelling-house.

Provided also that any expense reasonably incurred by the person or persons having control over the room, or any damage done to the room or its contents in consequence of its being so used, shall be defrayed by such parish electors or the parish council[5] who, when the meeting is called for the purposes of any candidature, shall be entitled to recover such expense from the person or persons calling the meeting.

1. Compare sec. 15 of the Allotments (Scotland) Act, 1892; sec. 6 of the Ballot Act, 1872; the Municipal Elections (Scotland) Act, 1897; and reg. 22 (1) of the Old Age Pensions Regulations, 1911.

2. See secs. 10 (1) and 12 (8).

3. The purposes for which a school may be used free of charge are very comprehensive, and appear to embrace all the functions of a Parish Council. But they will not include public meetings for objects which are not connected with the Acts of Parliament mentioned or which are not in connection with the candidature of any person for the County, Parish Council, or Landward Committee. A meeting of electors called with the intention of discussing any action or proposed action of the Parish Council would presumably come within the provisions of the section. Payments by a Parish Council for the rent of a hall for a meeting of ratepayers to nominate candidates for a Parish Council

Sec. 31.

election have been held by the Board to be illegal, and they have warned Town Councils that in the event of their being called on to determine the question of election expenses under sec. 15 (2) they will not allow charges for private halls in which to conduct the elections where public schools are both convenient and available.

The parish electors and the Parish Council are not necessarily confined to the use of schools within their own parish.

4. *I.e.*, including buildings provided under sec. 24 (1) (*a*).

5. It will be observed that the term "Parish Council" in the proviso does not, as in the section itself, include a Landward Committee. The Parish Council appear to have a discretion to defray any expense occasioned by the use of a room whether they themselves or the parish electors make the application, and whether or not the meeting is called for the purposes of any candidature. In the latter event, however, they may, if they think proper, recover the expenses from the person or persons calling the meeting.

Incorporation of parish council.

32. Every parish council[1] elected in pursuance of this Act shall be incorporated under the name of the parish council of the parish, with power to sue and be sued,[2] and shall have perpetual succession.

1. Parish Council in this section does not include a Landward Committee. But a Landward Committee may also sue and be sued as such—see sec. 23 (2). There is no direction in the statute as to how deeds granted by Parish Councils are to be authenticated, but the usual practice is for the chairman and clerk to sign. In the absence of the chairman, two members of Council usually sign. The requirement of English law, that all deeds of a corporate body must be made under seal, does not apply to Scotland, but many Parish Councils have deemed it advisable to adopt an official seal. In the case of investments in English securities difficulties have arisen in regard to registration where the Parish Council did not possess a seal. See note 1 to sec. 25 (15).

2. A corporate body is usually sued in its corporate name. The Parochial Board was not a corporate body, but sec. 57 of the Poor Law Act, 1845, provided that proceedings on its behalf could be taken in the name of the inspector of poor.

That section is still in force, and will apply to a Parish Council. The right of the collector of rates to sue in the name of the Parish Council was challenged in the case of *Clark* v. *Magistrates of Perth*, but decided in favour of the collector. Perthshire Sheriff Court, 31st October, 1901, 18 S.L.Rev. 113. Sec. 32.

Corporations may be cited either by delivery of a copy of the summons to the preses at a meeting of the Corporation or by delivery of copies to each member. Mackay's "Manual of Practice in the Court of Session," p. 203.

Committees of parish councils.

33. A parish council may from time to time appoint,[1] from their own number,[2] committees for the exercise of any powers which can properly be exercised by committees,[3] and no committee of a parish council shall unless re-appointed hold office beyond the next statutory meeting[4] of the council following its appointment, provided that a parish council shall not delegate to a committee any power of raising money by rate or loan.

1. A Landward Committee is not a Committee appointed by the Parish Council. Although termed a committee of the Parish Council, it has independent powers. Sec sec. 23 (2) and (3) and relative notes.

2. It would not be competent to appoint to a committee persons who were not members of the Parish Council.

3. Special authority is necessary before a public body can divest itself of responsibility and delegate its powers to a committee. (*Thomson* v. *Dundee Commissioners*, 8th December, 1887, 15 R. 164.) For instance, a Parish Council cannot delegate to a committee duties that are by statute specifically laid on the Council itself, *e.g.*, the imposing of assessments, although they may appoint a committee to assist them in arriving at a decision on the matter. The whole Parish Council may sit as a committee, and it was held in *M'Gowan* v. *Bell* (18th July, 1865, 3 M. 1097), where a meeting had resolved itself into a "committee of the whole house" for the purpose of considering some particular item of business that there was no objection

Sec. 33. to a resolution passed in the name of such committee. Ordinarily, of course, committees are subject to the terms of their remit, and their powers are regulated by the body by whom they are appointed according to the nature of the business they may be deputed to transact.

4. *I.e.*, beyond a date within ten days after the first Tuesday of December, save in fishing burghs, when the date may have been altered. See sec. 19 (6) and notes.

Appointment of joint committees.

34. Any parish councils, or parish councils and county councils or district committees or town councils *or burgh commissioners*,[1] may, from time to time, join in appointing, out of their respective bodies, a joint committee for any purpose of this Act in which they are jointly interested, and the provisions of section seventy-six of the principal Act,[2] with regard to the appointment and powers of joint committees of county councils, or of county councils and town councils, shall, with the necessary variations, apply to joint committees appointed under this section.

1. The words in italics are now obsolete. See sec. 5 of the Town Councils Act, 1900.

2. Sec. 76 of the principal Act provides as follows:—

76.—(1) Any County Councils or County Councils and Town Councils may from time to time join in appointing out of their respective bodies a joint committee for any purpose of this Act in respect of which they are jointly interested.

(2) Any Council taking part in the appointment of any joint committee may from time to time delegate to the committee any power which such Council might exercise for the purpose for which the committee is appointed.

(3) Provided that a Council shall not be entitled to delegate to a joint committee any power of raising money by rate or loan.

(4) Subject to the powers of delegation, any such joint committee shall, in respect of any matter delegated to it, have the same power in all respects as the Councils appointing it, or any of them, as the case may be.

(5) The members of a joint committee shall be appointed at such times and in such manner as may be from time to time fixed by the Council who appointed them, and shall hold office for such time as may be fixed by such Council.

(6) The number of members of a joint committee to be appointed by each Council shall be fixed by arrangement.

(7) The joint committee shall from time to time elect a chairman who shall hold office for such period as shall be fixed at the time of his election, and in the case of an equality of votes for two or more persons as chairman, one of those persons shall be elected by lot. The chairman shall have a casting vote as well as a deliberative vote.

(8) The costs of a joint committee shall be defrayed by the Councils by whom any of its members were appointed in the proportion agreed to by them. The proportion of the costs falling to be defrayed by any County Council or Town Council shall be paid out of the county fund or burgh fund, as the case may be, and shall be provided for by a rate to be imposed and levied as nearly as may be in the same manner and subject to the same provisions as if the costs had been incurred by the County Council or by a District Committee, or by the Town Council, as the case may be.

(9) The Councils appointing a joint committee may jointly from time to time make, vary, and revoke regulations respecting the quorum and proceedings and place of meeting of the joint committee.

(10) * * * * * * * *

Parish accounts.

35.—(1.) (*a.*) All receipts of a parish council relating to or arising out of powers transferred to them by Part III. of this Act shall be carried to a general parish fund;[1] and

(*b.*) All receipts of a parish council or landward committee in relation to or arising out of powers conferred upon them by Part IV. of this Act shall be carried to a special parish fund;[1] and

(*c.*) All payments in relation to or arising out of the said powers respectively shall be made out of the said funds respectively.

Sec. 35 (1). A separate bank account[2] shall be kept for each fund and all cheques for payment of moneys shall be signed by two members of the parish council or landward committee, as the case may be, and be countersigned by the clerk.[3] The Board shall make rules[4] as to the method in which payments shall be made by a parish council and by a landward committee.

1. A distinction is drawn between the general parish fund and the special parish fund. The former is to be credited with all receipts arising out of the powers transferred from the Parochial Board and the latter with the receipts arising from the new powers conferred on Parish Councils and Landward Committees by this Act.

2. It is not necessary to have more than two bank accounts. The accounts should be in the name of the Parish Council, and not of the inspector of poor or clerk.

3. *I.e.*, the inspector of poor where there is no clerk. (Sec. 19 (2).)

4. The principal rules and instructions of the Board as to accounting matters are printed in the Appendix, pp. 277-329.

(2.) A parish council and a landward committee shall keep such accounts of the above-mentioned funds, and of the sums raised by rates, as will prevent a rate from being applied to any purpose to which it is not properly applicable. The Board shall prescribe forms[1] in which such accounts shall be kept.

1. Model forms of accounts have been prescribed by the Board both for Parish Councils and for poorhouses.

Audit of accounts.

36. The provisions contained in sections sixty-eight to seventy inclusive of the principal Act[1] with respect to the making up and auditing of the accounts of a county

council shall, with the substitution of "parish council" for "county council," and "clerk of the parish council" for "county clerk," and "parish" for "county" or "burgh," and "the Board" for "the Secretary for Scotland," apply to the making up and auditing of the accounts of a parish council, including those of a landward committee, subject to the following provisions, that is to say: Sec. 36.

(1.) The accounts of the parish council shall be audited by an auditor appointed by the Board.[2]

(2.) The Board may, by order, prescribe rules modifying the enactments as to the time and place of audit.[3]

(3.) The Board may prescribe a scale for the remuneration of auditors in respect of their duties under this section.[4]

(4.) The accounts of a parish council shall be transmitted[5] annually by the clerk of the council[6] as soon as may be after the fifteenth day of May but not later than the first day of August to the auditor appointed by the Board.

1. Secs. 68 to 70 of the principal Act, as adapted to the audit of Parish Council accounts by this section, are printed in the Appendix, with relative notes. See pp. 248-270.

2. The audit districts correspond where possible with the poorhouse areas. In parishes having poorhouses of their own an auditor is usually appointed for each parish. In poorhouse combinations one auditor conducts the audit of the accounts of all the parishes in the combination, including the poorhouse accounts. The latter accounts are, of course, really part of the accounts of all the parishes in the combination, and, therefore, if not audited independently, would require to be included in the accounts of the several parishes. The practice has always been to

Sec. 36.

conduct an independent audit of the poorhouse accounts, and to appoint the auditor of these accounts auditor of the accounts of each parish in the combination. Parishes not in poorhouse combinations are grouped into divisions, and an auditor appointed for each division. There are one hundred auditors appointed by the Board to audit the accounts of Parish Councils. The appointments are made annually in or about the month of October. Auditors are not eligible for appointment after they attain the age of sixty-five years.

3. See note 4 to sec. 35.

4. The Parish Council fix the salary and allowances payable to the auditor, subject to the approval of the Board. (Sec. 69 of the Local Government Act, 1889.) The Scale of Fees for parish auditors prescribed by the Board will be found in the Appendix, p. 293.

The auditor is not entitled to a separate fee for auditing trust funds vested in the Parish Council, but the expenditure of the trust may be added to the ordinary parish expenditure and the fee calculated on the total amount. The fee for auditing the accounts of a trust managed by a joint committee under sec. 30 (3) is a matter for arrangement between the committee and the auditor. As parish auditor he has no concern with such trusts (see note 3 to sec. 30 (7)), and will only act when appointed by the committee to undertake the work.

It is not necessary to allocate the auditor's fee as between the various heads of poor law management. See note 3 to sec. 27 (3).

5. See sec. 70 (3) of the Local Government Act, 1889 (p. 280), which provides a remedy in the event of a failure to transmit the books.

6. Or inspector of poor. (Sec. 19 (2).)

Local annual budget.

37. At a meeting in the month of July in each local financial year[1] every parish council shall cause to be submitted[2] to them the estimates of the receipts and expenditure of such council, including those of a landward committee[3] or other committee thereof, during

that financial year, whether on account of property, contributions, rates, loans, or otherwise, and shall revise[4] such estimates (other than those of any landward committee), and authorise such expenditure and make such provision for meeting the same, as they shall approve. Sec. 37.

1. The financial year is from 16th May to 15th May.

2. Where there is a clerk other than the inspector of poor, it is usual for the former official to submit the budget. The inspector, of course, will have to be consulted as to the estimates connected with poor law business, but those for education, special parish fund, &c., should be prepared by the clerk.

3. See sec. 27 (3) and notes.

4. The provisions of this section will not prevent the revision of the estimates at a subsequent date should it be found necessary to revise them. The *rate* of assessment can hardly be fixed in July. The proper course is to submit the estimates to the budget meeting and to fix the amount to be raised by assessment, leaving the actual rate to be fixed when the valuation roll is available.

38.—(1.) If and so long as the amount of loans owing by any parish council for the time being exceeds one-fifth of the annual value[1] of the lands and heritages within such parish as ascertained for the purposes of the Poor Law (Scotland) Act, 1845, no further loan, other than a temporary loan in terms of section eighty-nine of the said Act,[2] shall be raised by such parish council without the consent of the Board. Borrowing by parish councils. 8 & 9 Vict. c. 83.

1. Few Parish Councils will incur debt to an amount exceeding one-fifth of the annual value of the parish.

2. Sec. 89 of the Poor Law Act, 1845, provides that "if the [parish council] of any parish or combination shall find it necessary in any year or half-year to make disbursements for the relief of the poor beyond the amount received

See. 38.

of the assessment applicable to the expenditure of such year or half-year, it shall be competent for such [council] to borrow money on the security of such part of the assessment as is still due and unreceived, but not to an amount greater than one-half of such part of such assessment; and when any money has been so borrowed as aforesaid on the security of assessments, it shall not be competent to borrow on the security of any future assessment until the money borrowed as aforesaid shall have been paid off."

(2.) Where money has been borrowed by a parish council, or by a parochial board, the parish council shall, until the loan has been extinguished, within twenty-one days after the expiration of each local financial year, transmit to the Secretary for Scotland a return[1] in such form, and verified in such manner, as he may from time to time prescribe, showing the amount of the loan still outstanding, and the steps which have been taken to comply with the provisions of this or any other Act in regard to its payment and discharge.

1. It is now unnecessary to transmit this return, as the abstract of accounts in the form prescribed by the Board is accepted in lieu thereof.

Duty of Board and of county and town councils *and burgh commissioners* to bring Act into operation.

39.—(1.) It shall be the duty of the Board, and of every county council and town council, *and of burgh commissioners in a police burgh*,[1] to exercise all powers which may be requisite for bringing this Act into full operation as soon as may be after the passing thereof.

1. The words in italics are now obsolete. See sec. 5 of the Town Councils Act, 1900.

(2.) Where the Board are authorised or required by any Act to make or confirm any order, rule, or regulation, or to give any consent, sanction, or approval, or otherwise to act, they may cause a local inquiry to be

held in terms of sub-section eight of section twenty-five of this Act, and the provisions of that sub-section shall apply accordingly.[1] Sec. 39.

1. See also sec. 11 of the Poor Law (Scotland) Act, 1845, and secs. 6, 7, and 8 of the Public Health (Scotland) Act, 1897.

40. The chairman of a district committee[1] and the chairman of a parish council, unless a woman or personally disqualified by any Act, shall by virtue of their office be justices of the peace[2] for the county[3] in which the district or parish is situate. Chairman of district committee and of parish council to be justice.

1. The chairman of a District Committee is appointed in terms of sec. 80 of the Local Government Act, 1889.

2. If a chairman of a District Committee or a Parish Council desires to exercise the privilege conferred on him by this section and to qualify as a justice of the peace he must take the necessary oath. It is customary in Scotland for the clerk of the peace to charge a fee, varying from 5s. to 10s. 6d., for the administration of the oath, although there is apparently no authority for such a charge. It is illegal to charge the rates with the expense of qualifying as a justice of the peace.

By the Ex-officio Justices of the Peace (Scotland) Act, 1898, 61 & 62 Vict. c. 20, "any ex-officio justice of the peace in Scotland who has been re-elected to the office in respect of which he became a justice of the peace on the expiration or other determination of a previous term of office, and who has taken the oaths required by law to be taken by a justice of the peace, may continue to act as a justice of the peace without again taking such oaths."

In reply to a question as to whether it was necessary for justices of the peace to take the oath anew on the demise of the Crown, the Home Secretary, on 21st February, 1901, stated in the House of Commons—"I am advised that it is not necessary in consequence of the demise of the Crown that justices should take anew the judicial oath and the oath of allegiance, but that it is desirable they should do so." (Parliamentary Debates, vol. 89, p. 683.)

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The chairman of a Landward Committee is not entitled, in virtue of his office, to be a justice of the peace.

3. Sec. 105 of the Local Government Act, 1889, as applied by sec. 54 of this Act, defines the expression "county" as meaning a county exclusive of any burgh wholly or partly situate therein, and does not include a county of a city. The question arose as to whether the chairman of the Parish Council of Edinburgh was entitled to be a justice of the peace for the county of Midlothian or for the county of the city of Edinburgh. The Board expressed the opinion that he was *ex officio* a justice of the peace for the county of the city, because the definition of "county" in sec. 105 of the 1889 Act was applicable only "if not inconsistent with the context." They considered that to exclude him from the county of the city where his public work was performed, and to insist on his becoming a justice of the peace in Midlothian, would be contrary to the intention of this section, and that to so interpret the word "county" would be inconsistent with the context. (Board's 16th Report, 1910, p. xlvi.)

Absence from meetings.

41.[1] If a parish councillor is absent from meetings of the parish council for more than six months consecutively,[2] then, except in case of illness, or for some reason approved[3] by the parish council, his office shall, on the expiration of the said six months, become vacant, and the vacancy may be filled as a casual vacancy.

1. This section does not apply to a Landward Committee.

2. In reckoning the period of absence from meetings the *de quo* is the first meeting a councillor fails to attend. Absence from two consecutive quarterly meetings will not bring him within the provisions of the section. If a member is absent from meetings for more than six months the Parish Council should, except in a case of illness, give him an opportunity of submitting to them the reason of his absence. If such reason be not approved, the Parish Council should pass a resolution declaring the seat vacant, and should proceed to fill it as a casual vacancy. (Board's 3rd Report, 1896-97, p. xxviii.)

The Board were further of opinion that a Parish Council would not be justified in tabling a resolution to apply the

provisions of this section in the case of a member who had been absent from meetings of the *Council* for more than six months consecutively, but who during that period had attended a *committee* meeting. It is the duty of the clerk to direct the attention of the Parish Council to the fact that members have been absent from meetings for over six months, and to take their instructions as to subsequent procedure. (Board's 12th Report, 1906, p. xxxii.) Until the office of councillor has been declared vacant, notice of meetings must continue to be sent to the person concerned.

In the event of a councillor resuming his seat after having been absent for more than the statutory period, the Board expressed the view that, if no steps had been taken to declare his seat vacant, his vote could not be successfully challenged on the ground that by reason of non-attendance he had ceased to be a member of the Parish Council. (4th Report, 1898, p. xxxi.)

3. It is not necessary that the Parish Council should *approve* the reason for absence in cases of illness. *Rex* v. *Hunton*, 23rd March, 1911, 9 Knight's Reports, No. 7, p. 751.

In the event of a councillor through serious and permanent illness (*e.g.*, insanity) being unable to tender his resignation, it does not appear that any action to disqualify him can be taken. He will retain his seat till the next election.

Protection of rights of way.

42.—(1.) It shall be the duty of a town council *or in a police burgh of the burgh commissioners*,[1] and of a district committee, and, where there is no district committee, of the county council, to assert, protect, and keep open and free from obstruction or encroachment any right of way, whether wholly within or partly within and partly without the burgh, police burgh, district, or county respectively, which it may appear to them respectively that the public have acquired by grant, prescriptive use, or otherwise, and they may respectively, for the purpose of carrying this section into effect, institute and defend any legal proceedings,

Sec. 42. and generally take such steps as they may deem expedient.

1. The words in italics are now obsolete. See sec. 5 of the Town Councils Act, 1900.

(2.)[1] Where a parish council,[2] or any six parish electors,[3] of a parish have represented to the district committee[4] or, where there is no district committee, to the county council, that any public right of way within the district, or beneficial to any inhabitants of the district, has been or is likely to be shut,[5] or obstructed, or encroached upon, it shall be the duty of the district committee, or, where there is no district committee, of the county council, if they are satisfied that the representation is well founded,[6] to take such proceedings as may be requisite for the vindication of the right of way, and if the district committee refuse or fail to take proceedings in consequence of such representation, the parish council, or the electors who made the representation, may petition the county council, and if the county council so resolve, the powers and duties of the district committee under this section, in relation to such right of way, shall be transferred to the county council.

1. See notes to sec. 29.

2. A Landward Committee has no power of representation under this sub-section.

3. See secs. 10 (1) and 12 (8).

4. There is no express authority to make a representation to a Town Council, but there could be no reason why a Parish Council should not direct the attention of the Town Council to any obstruction of a right of way in the burghal portion of the parish and to their duty under sub-sec. (1).

5. There does not appear to be any authority for depriving the public of a right of way once acquired. **Sec. 42 (2).**

6. On the question whether the District Committee should inquire or take evidence as to the *existence* of a right of way, or whether their duty was merely to inquire into the alleged obstruction, the Board expressed the opinion that both matters should be inquired into. The District Committee had to be *satisfied* that the representation was well founded, which the Board thought involved satisfaction as to both heads, viz.—(1) the existence of a right of way, and (2) that there is an obstruction actual or threatened. The nature of the inquiry must vary with each individual case, and must be regulated by discretion so as to be reasonable without being extravagant. (3rd Report, 1896-97, p. xxvi.)

While it must always be to the interest of the Parish Council to furnish all the information they can in support of any representation, the duty of asserting and protecting rights of way is laid on the District Committee, and the road rate is charged with any proceedings. It is not clear that there is any obligation on the Parish Council to undertake the production and payment of witnesses, and it may be that they are not even entitled to do so. (5th Report, 1899, p. xxix.) In authorising a Parish Council to employ a solicitor to represent their case to the County Council (the District Committee having refused or failed to take proceedings), the Board again emphasised the fact that it was not the duty of the Parish Council to procure evidence as to the existence of a right of way, and that they would not be entitled to employ a solicitor for that purpose. (11th Report, 1905, p. xlviii.) See also note 2 to sec. 29 and opinions of counsel (Mr. Scott Dickson, K.C., and Mr. Salvesen, K.C.), 6th March, 1899, 7 Co. Co. Cases, 101, with reference more particularly to the nature of the evidence that must be led by a District Committee in order to establish the public right.

It is not competent to raise an action of declarator of right of way in the Sheriff Court. Opinion of counsel (Mr. Salvesen, K.C., and Mr. Sandeman), 6th Oct, 1899, 7 Co. Co. Cases, 93.

The defender in an action by a proprietor to have it declared that he held his property free of an alleged right of way moved the Lord Ordinary to sist the action *in hoc statu*, on the ground that he was out of funds to maintain

Sec. 42.

the defence, and that the County Council, in terms of this section, were entitled to an opportunity of intervening and vindicating the public right. The Court granted the sist. *Alston* v. *Ross*, 12th December, 1895, 23 R. 273; 33 S.L.R. 205; 3 S.L.T. 213; 3 Co. Co. Cases, 23.

(3.) Any expenditure incurred by a county council or a district committee thereof in connexion with any legal or other proceedings, under the two preceding sub-sections, or either of them, shall be defrayed out of the road rate for the district, or, where a county is not divided into districts, out of the road rate for the county. Provided always, that any litigant who is successful against the county council or district committee shall not be assessed for such portion of the road rate as is rendered necessary by such expenditure.

(4.) Within a county, district, or parish respectively it shall be in the power of the county council, or district committee, or parish council,[1] and of any member or members of the public, with the consent of any one of these bodies, to erect and maintain guide posts and direction notices upon any right of way.

1. See note 2 to sub-sec. (2).

Power to heirs of entail to grant land belonging to an entailed estate.

43. Any heir of entail in possession of land in Scotland, and the trustee, tutor, and curator of such heir of entail, if in minority or subject to any legal incapacity, may give and grant to a parish council,[1] or to the *commissioners*[2] of a police burgh, land belonging to the entailed estate to be used for public recreation, but not exceeding in the whole twenty acres: Provided that no such grant shall be effectual unless the heir of entail next in succession of lawful age and any

persons in right of heritable securities or other charges affecting such land shall consent thereto, or unless, in the event of the persons in right of such heritable securities or other charges refusing such consent, the sheriff, upon the application of the heir of entail in possession, duly intimated to such persons (who shall be entitled to appear and object), shall have found that the lands comprised in such heritable securities or charges, other than the lands proposed to be granted, afford adequate security; and the land so given and granted shall not be liable to nor affected by any other rights, titles, trusts, interests, or incumbrances to, in, or upon the same whatsoever, and such heir of entail shall not thereby be subject to nor incur any forfeiture or irritancy under the entail thereof: Provided always, that such land shall not be within a quarter of a mile of the mansion house in the natural possession of the proprietor, or part of any gardens, orchards, or enclosures adjacent to the mansion house which have usually been in the natural possession of the proprietor.

1. Compare sec. 24 (1) (*b*). The term "Parish Council" does not include a Landward Committee.

2. Now the Town Council. See sec. 5 of the Town Councils Act, 1900.

Formation of lighting and scavenging districts, and provision of public baths.

44.—(1.) It shall be lawful in a county for a parish council[1] or for any two or more parish councils, or for not fewer than ten parish electors[2] of any landward parish or of the landward part of any parish partly landward and partly burghal, to make a requisition[3] in writing[4] to the district committee of the county council, or when a county is not divided into districts

Sec. 44 (1). to the county council, calling upon them to form such parish or parishes or landward part of a parish or any portion or portions thereof into a special district for the following purposes[5] or any one or more of them; that is to say,—

(*a.*) The lighting of the special district and the adoption for such purpose by the district committee or county council as the case may be of the provisions contained in sections ninety-nine to one hundred and five inclusive of the Burgh Police (Scotland) Act, 1892[6], or any one or more of them:

55 & 56 Vict. c. 55.

(*b.*) The scavenging of, and the removal of dust, ashes, and other refuse from, the streets, roads, footpaths, lands and premises in such special district, and the adoption for such purposes by the district committee or the county council, as the case may be, of the provisions contained in sections one hundred and seven to one hundred and twenty-seven, and two hundred and fifty-three to two hundred and fifty-five, inclusive, of the Burgh Police (Scotland) Act, 1892,[6] or any one or more of them:

(*c.*) The provision and maintenance of public baths or bathing places, wash-houses, and drying grounds, and the adoption for such purposes by the district committee or county council, as the case may be, of the provisions contained in sections three hundred and nine to three hundred and fourteen, inclusive, of the Burgh Police (Scotland) Act, 1892,[6] or any one or more of them.

1. A Landward Committee has no power of requisition under this section.

2. See secs. 10 (1) and 12 (8).

3. The Board on 7th November, 1895, issued a circular and relative form of requisition, which are printed in the Appendix, p. 271. It is doubtful whether a Parish Council can competently withdraw a requisition after it has been presented to the District Committee and the statutory procedure commenced. (Board's 2nd Report, 1895-96, p. xxviii.)

Two or more Parish Councils may combine in forwarding a requisition to the District Committee. Where the proposed special district, however, is situated in more than one parish, and where the Parish Councils do not move in the matter, there must be requisitions from not less than ten parish electors in each parish, but the District Committee may consider the requisitions together and form a special district comprising all the special districts proposed.

It is desirable that there should be separate requisitions for each special district, but it does not appear to be incompetent for the one requisition to embrace a proposal to form more than one district. In such a case there is nothing to prevent the District Committee dealing with one part only of the requisition if they see fit.

4. See definition of the term "writing" in sec. 20 of the Interpretation Act, 1889, p. 43.

5. Special districts may also be formed for drainage and water supply under secs. 122 and 131 of the Public Health (Scotland) Act, 1897; and in Orkney and Zetland, subject to the Board's consent, for the construction and maintenance of small harbours, piers, and boat slips, under the Orkney and Zetland Small Piers and Harbours Act, 1896. For latter Act, see Appendix, p. 273.

6. The provisions of the Burgh Police Act referred to will be found in the Appendix, p. 248. Sec. 10 (2) of the Local Government (Scotland) Act, 1908, provides that, subject to the adaptations specified in sub-sec. (3), "A county council may at a meeting called after due notice by resolution adopt, within any special lighting, scavenging, drainage, or water district, formed under the Local Government (Scotland) Act, 1894, or the Public Health (Scotland) Act, 1897, sections one hundred and forty-four, one hundred and forty-five, one hundred and fifty-eight, and one hundred and ninety-one to two hundred (as amended by the Burgh Police (Scotland) Act, 1903) inclusive, of the Burgh Police (Scotland) Act, 60 & 61 Vict. c. 38. 3 Edw. 7 c. 33.

Sec. 44 (1). 1892, or any one or more of such sections, and after a date to be specified in the resolution the adopted section or sections shall have effect in such district in like manner respectively as if they were herein re-enacted, provided that, where a county is divided into districts, such resolution shall not be competent except upon the requisition of a district committee."

It was held in the case of *Fleming and Others* v. *Liddesdale District Committee of Roxburghshire*, 23rd November, 1897 (O.H.), 5 S.L.T. 247, that a resolution to form the whole parish of Castleton into a special district, when the proposal was merely to light a small portion of it, viz., the village of Newcastleton, was *ultra vires*. The object of the formation of a special district is to localise the assessment so that only those who benefit will pay. The objection raised in the Liddesdale case was that the whole parish was included for no other purpose than to obtain a valuable assessable area. See also *Helmsdale Local Authority* v. *Duke of Sutherland*, 27th September, 1893, 1 S.L.T. 242, 2 Co. Co Cases, 129; *Mackenzie* v. *Local Authority of Urray*, 29th March, 1889, P.L.M. 1889, p. 321; *Elgin County Council* v. *Hogarth*, P.L.M. 1903, p. 609; *Royal Lunatic Asylum of Montrose and Others* v. *Brechin District Committee of the County Council of Forfarshire*, 24th July, 1900, 16 S.L.Rev. 336, 7 Co. Co. Cases, 83; *Stewarts & Lloyds, Ltd.* v. *County Council of Lanarkshire*, 1909, 16 Co. Co. Cases, 169.

The North British Railway Company appealed to the Sheriff against a resolution of the Eastern District Committee of Berwickshire forming a special lighting and scavenging district at Ayton, which was to include the railway station, it being entirely isolated from the rest of the area except for the line of the public road to the station, which it was also intended to include. The railway company contended that their property would derive no advantage from the lighting and cleansing of the road, though it was the principal access to the station. The appeal was refused on the ground that the proposed improvement was to be carried out not in the interest of the appellants alone but in the general interest of the inhabitants of the district, of which their property forms a part. *North British Railway Company* v. *Eastern District Committee of Berwickshire*, 13th June, 1899, 16 S.L.Rev. 161; 7 Co. Co. Cases, 76.

Sec. 44 (2).

(2.) Upon such requisition being received, the district committee or county council, as the case may be, shall be bound to meet, after twenty-one clear days'[1] notice, and shall consider the propriety of forming such parish or landward part of a parish or portion thereof into a special district, and shall by resolution either approve or disapprove of the formation of a special district (which shall in no case include a police burgh or any portion thereof) for the purposes stated in the requisition or any one or more of them, and, if they approve thereof, shall define the boundaries[2] of such special district and specify which of the provisions[3] of the Burgh Police (Scotland) Act, 1892, referred to in the preceding sub-section are to be adopted therein. Such resolution shall be final,[4] subject to the provisions of sub-section three of this section, and in the event of the district committee or county council, as the case may be, disapproving of the formation of a special district as proposed in a requisition, it shall not be competent to make another requisition to the same effect until after the expiration of twelve months. A copy of every such resolution shall be forthwith published[5] in one or more newspapers circulating in the district[6] and transmitted to the Board and to the county council.

55 & 56 Vict. c. 55.

1. That is, including Sundays. See note 3 to sec. 19 (6).

2. The District Committee are not bound to adhere rigidly to the terms of the requisition. On the other hand, they are not entitled to disregard it and to include within the special district a very much larger area than is indicated in the requisition. The extent to which they may deviate from that area is a question of circumstances, as to which no general rule can be laid down. (Board's 1st Report, 1894-95, p. xv.)

Sec. 44 (2). 3. In reply to a question whether it would be competent to adopt parts only of the specified sections of the Burgh Police Act, the Board took the view that it was more consonant to the sense and to the practical working of the Acts to hold that the District Committee may select those provisions of the adoptive sections which they think desirable. The excision must, of course, be regulated by common sense. For instance, it would not be permissible to take a provision and leave out a proviso. This condition applies equally to the adoption of sections, as sometimes the proviso to one section is put in the form of another. (2nd Report, 1895-96, p. xxviii.) See also note 1 to sec. 107 of the Burgh Police Act, 1892, p. 255.

4. Sec. 38 of the Public Health (Scotland) Act, 1897, as amended by sec. 14 (4) of the Local Government (Scotland) Act, 1908, provides for an appeal to the Sheriff from the resolution of the District Committee or the County Council as the case may be. It further applies the provisions of sub-sec. (1) of sec. 122 of the Public Health Act. Sec. 14 (3) of the Local Government (Scotland) Act, 1908, gives power of appeal to the Town Council of any burgh or police burgh in the near vicinity of any area proposed to be formed into or included within the boundaries of a special district, provided that such Town Council shall within the time during which appeal against the resolution is competent, have presented a petition to extend the boundaries of the burgh or police burgh so as to include the whole or any part of the area to be formed into or taken out of the special district. Secs. 38 and 122 (1) of the Public Health Act, 1897, provide as follows:—

Sec. 38. "With respect to the formation, *extension, limitation, or combination** of special districts for scavenging and other purposes under section forty-four of the Local Government (Scotland) Act, 1894, the following provision shall have effect; (that is to say),

> "It shall be competent for any person interested to appeal to the sheriff against any resolution of a district committee or county council, as the case may be, under sub-section two of the recited section, and all the provisions of sub-section one of section one hundred and

* The words in italics represent the amendment effected by Sec. 14 (4) of the Local Government (Scotland) Act, 1908.

twenty-two of this Act in regard to an appeal to the sheriff against a resolution of a local authority shall, with the necessary modifications, apply to an appeal against a resolution of a district committee or county council as aforesaid. Provided that in cases to which sub-section three of the said section forty-four of the Local Government (Scotland) Act, 1894 (57 & 58 Vict. c. 58) applies an appeal to the sheriff shall not be competent unless the resolution has been disposed of by the county council in terms of that sub-section. **Sec. 44 (2).**

"Where the boundaries of any burgh are extended so as to include the whole or part of any such special district, then the town council . . . shall, as regards the whole of such special district, supersede the district committee or county council as the case may be in the administration of the Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), and other powers in regard to cleansing and scavenging upon such terms as shall be agreed between the town council . . . and the district committee or county council, as the case may be, or, failing agreement, upon such terms as shall be fixed by the Sheriff, whose decision shall be final."

Sec. 122 (1). "Upon requisition to that effect made in writing by a parish council or by not fewer than ten ratepayers within the district of a local authority not being the local authority of a burgh, the local authority shall be bound to meet, after twenty-one days' notice, or, if the local authority itself so resolve, it may meet after twenty-one days' notice, and shall, whether sewers or drains have been already constructed or not, consider the propriety of—

"(*a*) forming part of their district into a special drainage district; or

"(*b*) enlarging or limiting the boundaries of a special drainage district; or

"(*c*) combining a special drainage district with another special drainage district; or

"(*d*) enlarging or limiting the boundaries of both or either of such special drainage districts and combining the same or parts thereof; or

"(*e*) determining that any special drainage district shall cease to exist as a special drainage district, or that any such combination shall cease;

"and the resolution of the local authority shall determine all questions regarding the payment of any debt which may

Sec. 44 (2). affect any district or special drainage district, and the right to impose and the obligation to pay any assessment affected by such determination, and shall fix the date at which such determination shall take effect; and such resolution shall be published in one or more newspapers circulating in the district or by the posting of handbills throughout the district, and a copy of said resolution shall be forthwith transmitted to the Board, and, where the local authority is a district committee, to the county council; and the production of such newspaper or handbill, or a certificate under the hand of the clerk of the local authority (whose signature need not be proved), shall be sufficient evidence of such resolution; and within twenty-one days after the date of the first publication of such resolution it shall be competent for any person interested to appeal against the resolution, whatever its terms may be, to the sheriff, and the sheriff, not being a sheriff-substitute resident within the district, may either approve or disapprove of such resolution, and if he disapproves thereof he may either find that no special drainage district should be formed, or may enlarge or limit the special district as defined by the resolution of the local authority, or may find that a special drainage district should be formed and may define the limits thereof, or may find that such special drainage district or part thereof shall be combined as prayed, or that such combination shall cease, or that such special drainage district or districts shall, as such, cease to exist; and the decision of the sheriff shall be binding, and shall be final, except where it is pronounced by a sheriff-substitute, in which case it may be appealed to the sheriff."

With reference to the words "such special district," the following note occurs in MacDougall and Murray's Handbook of Public Health, p. 73:—

"The words 'such special district' *ex facie* refer to a special district formed for any of the purposes specified in section 44 of the Local Government Act, 1894; but the subsequent provision that the town council or commissioners are to supersede the district committee 'in regard to cleansing and scavenging,' without mention of other purposes, implies that the words must be construed as if they were 'such special scavenging district.'"

In the absence of express statutory authority doubt was expressed by the sheriffs as to their power to award expenses

in the case of appeals against resolutions forming special districts. The necessary power is now given by sec. 14 (4) of the Local Government (Scotland) Act, 1908, which provides that— Sec. 44 (2).

"In any finding or decision which the sheriff may pronounce in terms of any of the said sections, or of section thirty-eight of the Public Health (Scotland) Act, 1897, he may find any of the parties to the appeal liable in such expenses as he may think fit."

5. See sec. 14 (2) of the Local Government Act, 1908, which requires publication in the *Edinburgh Gazette*. Publication of the resolution is necessary, whether it approves or disapproves of the formation of a district, and sec. 14 (2) of the 1908 Act has the same effect as regards publication in the *Gazette*. In cases where the consent of the County Council is necessary under sec. 44 (3) the Board's view was that while the concluding sentence of sec. 44 (2) suggested that the resolution of the District Committee was to be published before being sent to the County Council, they thought the more convenient and reasonable course was to defer publication till the County Council had given their consent. Until that consent was given, the resolution of the District Committee could not have effect and was indeed incomplete, and there would appear to be no reason for publishing it. The publication was a necessary preliminary for an appeal, but until the County Council had given their consent the resolution was not final, and was therefore not at the stage for an appeal. (16th Report, 1910, p. lvi.)

The Sheriff of Perthshire (Johnston) held that the *whole* resolution required to be advertised. *Lornie* v. *Highland District Committee of Perth County Council*, 17th February, 1909, 25 S.L.R. 124; 16 Co. Co. Cases, 132.

6. The word "district" refers to the district of the local authority, not to the "special district." See *Kenneth & Sons* v. *Northern District Committee of the County Council of Ayrshire*, 26th January, 1900, 2 F. 511; 7 S.L.T. 358; 37 S.L.R. 366; 7 Co. Co. Cases, 16.

(3.) Where the proposed special district is co-extensive with or comprises the whole or part of the area of any special drainage or water supply district formed under the Public Health Acts, the consent of the

Sec. 44 (3). county council shall be required to any resolution approving[1] of the formation of a special district under this section, and in giving or refusing such consent the county council shall take into consideration the whole circumstances of the case, including the amount of the rates levied for the time being under the Public Health Acts and the principal Act within the proposed special district, and the county council may consent to the resolution either with or without modifications.

1. The consent of the County Council to a resolution *disapproving* the formation of a special district is not required. *Uphall Parish Council* v. *Bathgate District Committee*, Sheriff Court, 11th May, 1903, 13 P.L.M. 491.

(4.) On the adoption by a district committee or county council, as the case may be, of any of the provisions above mentioned, such provisions shall have effect within or in relation to the special district, subject to the provisions of the Fourth Schedule to this Act annexed.[1]

1. See the adoptive sections adapted in accordance with the provisions of the Fourth Schedule of the Act, p. 248.

(5.) The area of a special district formed under this section may be enlarged or altered, *and any of the provisions of the Burgh Police Act*, 1892, *above mentioned may be rescinded or adopted therein, and a special district may be dissolved*,[1] and two or more special districts may be combined,[2] from time to time, by resolution of the district committee or county council, as the case may be, in terms of this section, with or without a requisition.[3]

1. The words in italics were incorporated by sec. 14 (5) of the Local Government (Scotland) Act, 1908. Hitherto

there was no power to dissolve a special district formed under sec. 44 (1).

Sec. 44 (5).

2. A combination under this section need not be for all the purposes of sec. 44 (1). The question arose in Lanarkshire in connection with the special lighting and scavenging district of Carfin, the boundaries of the special district for these two purposes being identical. The lighting district was combined with another lighting district, but the scavenging district was allowed to remain. Some doubt was expressed, having regard to this sub-section and more particularly to the following sub-section, as to the competency of continuing the special scavenging district in its original form. It was argued that the district was formed for the purposes of both lighting and scavenging, and that the one could not be combined without at the same time combining the other. The Board, however, while admitting that the question was one of considerable doubt and difficulty, took the view that there were two entirely independent districts, one for lighting and one for scavenging, and that the combination of the lighting district with another lighting district did not necessarily also involve the combination of the scavenging district. (16th Report, 1910, p. liv.)

3. See note 4 to sec. 44 (2). The amendment of sec. 38 of the Public Health Act, 1897, by sec. 14 (4) of the Local Government (Scotland) Act, 1908, allows an appeal against the resolution of a County Council or District Committee under this sub-section. Previously the right of appeal granted by sec. 38 of the Public Health Act was limited to resolutions with respect only to the formation of special districts.

(6.) Any expenditure attending the formation[1] of a special district, or the carrying out within such special district of the purposes of this section or of any of them, shall be paid out of an assessment to be imposed by the county council within the special district, to be called the special district rate, and levied along with and as an addition to and in excess of the public health rate, and with the same remedies and modes of recovery: provided that such special district rate shall

Sec. 44 (6). not exceed ninepence[2] in the pound on the annual value of the lands and heritages within the special district *as ascertained for the purposes of the Poor Law (Scotland) Act*, 1845,[3] and a county council may borrow for such of the said purposes as the Secretary for Scotland may by order prescribe[4] on the security of such special district rate.

8 & 9 Vict. c. 83.

1. Where the effect of an appeal to the Sheriff in terms of sec. 38 of the Public Health Act, 1897, is to prevent the formation of a special district, there appears to be no statutory provision as to how the costs are to be met. They will therefore fall on the general assessment. Where, however, the result of an appeal is the formation of a special district, the expenses incurred prior to its formation, as well as those to be subsequently incurred, may be charged to the special district rate. *Inverarity* v. *Forfarshire County Council* (H.L.), 28th June, 1906, 8 R. 15; 43 S.L.R. 673; 14 S.L.T. 235; 13 Co. Co. Cases, 101.

2. The special district rate must not exceed in the aggregate 9d. per £. Separate rates may, however, be levied for each special district, but if the limit of assessment is reached in one district there can be no assessment levied in any other district. Power is now given to the Board by sec. 16 of the Local Government (Scotland) Act, 1908, to increase the special district rate to such an extent as they may deem advisable.

3. The words in italics were repealed by sec. 196 and Schedule I. of the Public Health Act, 1897.

4. The County Council (Scotland) (Finance) Order, 1907, dated 23rd May, 1907, provides that—

"1. A County Council may, in terms of the said subsection as read with the adopted provisions, borrow money for the following purposes or any one or more of them, namely:—

"*A—Within Special Lighting Districts.*

"(*a*) The purchase and laying of mains and pipes.

"(*b*) The purchase and erection of lamps, lamp-posts, pillars and other appurtenances.

"(*c*) The provision of accommodation for the storage and housing of plant or the like purpose.

"*B.—Within Special Scavenging Districts.*

"The construction of capital works in connection with the collection, removal, deposit and disposal of dust, ashes, and other refuse, including, where necessary:—

"(*a*) The purchase of lands or premises.

"(*b*) The provision of a refuse destructor and relative plant.

"(*c*) The provision of separator, branch railway, engine, engine-house, and suitable plant.

"(*d*) The erection of stables and other offices for the housing of the horses and plant required for scavenging purposes.

"(*e*) The provision of public ashpits.

"(*f*) The erection of public water-closets, latrines and urinals, including the provision of lavatory accommodation where considered expedient, but without prejudice to any power of the local authority under the Public Health (Scotland) Act, 1897.

"2. Without prejudice to anything duly done thereunder, the County Council (Scotland) (Finance) Order, 1901, is hereby revoked.

"3. This Order may be cited as the County Council (Scotland) (Finance) Order, 1907.

(7.) The total amount required to be raised (so far as within a county) by a public health rate (including any special district rate) may be certified by the county council to the parish council, and may be collected by the parish collector along with the poor rate of the parish.[1] The amount collected in such case shall be paid over to the county council without any deductions, but the expense of collection (including the reasonable remuneration of the collector) shall be a debt from the county council to the parish council.

1. The power conferred by this sub-section does not appear to have been taken advantage of by any County Council.

Sec. 44 (8). (8.) Where a special district has been formed under this section, the district committee or the county council, as the case may be, may,[1] subject to regulations[2] to be from time to time made with the consent of the county council, appoint annually a sub-committee for carrying out the purposes for which such special district has been formed, and such sub-committees shall in whole or in part consist of parish councillors[1] of the parish or parishes in which the special district is situated, whether members of the district committee or not.

1. The appointment of a sub-committee is not imperative, but it is usual and desirable to make such an appointment. It may happen that members of the Parish Council decline to serve, in which event the appointment of a sub-committee would be impossible, and the management would be left in the hands of the District Committee or the County Council, as the case may be. See opinion of the Lord President (Robertson) in *County Council of Dumbarton* v. *Police Commissioners of Clydebank*, 16th November, 1894, 22 R. 64; 32 S.L.R. 56; P.L.M., 1895, 30; and *Kirkcaldy District Committee* v. *Police Commissioners of Buckhaven*, 8th November, 1895, 23 R. 107; 33 S.L.R. 70; P.L.M., 1896, 9.

2. The Board have expressed the opinion that regulations requiring each sub-committee to appoint a clerk were *ultra vires*. The district clerk must be the clerk to each sub-committee in the district, and, if the increased duties justified any increase to his salary, that increase would fall to be paid by the special districts. (3rd Report, 1896-7, p. xxx.)

(9.) From and after the first election[1] in a county of parish councillors, sub-section one of section eighty-one of the principal Act[2] shall be read as if for the words "shall in part consist of persons, whether "members of the district committee or not, who are "resident within the special drainage district or "special water supply district," there were substituted

the words "shall in whole or in part consist of parish "councillors of the parish or parishes in which the "special district is situated, whether members of the "district committee or not,"[3] and the number of a sub-committee appointed under the said section may, failing agreement between a district committee or county council and a town council *or the commissioners of a police burgh*,[4] be determined by the Secretary for Scotland.[5] Sec. 44 (9).

1. The first election took place on the first Tuesday in April, 1895, and the councillors elected took office on the 15th May following.

2. Sec. 81 of the Local Government (Scotland) Act, 1889, as amended by this Act, the Public Health Act, 1897, and the Town Councils Act, 1900, provides as follows:—

Sec. 81. "With respect to special drainage districts or special water supply districts the following provisions shall have effect:—

"(1) Where a special drainage district or special water supply district has been formed in any parish under the Public Health Acts, the district committee may, subject to regulations to be from time to time made, with the consent of the county council, appoint a sub-committee for the management and maintenance of the drainage or water supply works, and such sub-committee shall in whole or in part consist of parish councillors of the parish or parishes in which the special district is situated, whether members of the district committee or not;

"(2) Where a special drainage district or special water supply district is partly within a county and partly within a burgh or police burgh, the sub-committee appointed under the immediately preceding sub-section, and such number of the town council . . . of such burgh or police burgh as, failing agreement, the Secretary for Scotland may determine, having regard to all the circumstances of the case, shall be charged

Sec. 44 (9).

with the management and maintenance of the drainage or water supply works within such special district, and the determination of the Secretary for Scotland may provide for the regulation of the proceedings and for the allocation and payment of the expenses incurred under this sub-section;

"(3) Where a special drainage district or special water supply district is wholly within a police burgh formed after the passing of this Act, the *town council* of such police burgh shall become the local authority under the Public Health Acts for such special district."

3. The effect of the amendment is that a special district Sub-Committee must now be composed either entirely of parish councillors or partly of parish councillors and partly of members of the District Committee. Persons who are neither parish councillors nor members of the District Committee are not eligible to serve on a sub-committee.

4. The words in italics are obsolete. See sec. 5. of the Town Councils Act, 1900.

5. It was held that a determination of the Secretary for Scotland under the above section, that a police burgh should be represented on the committee in the proportion of eight members to six members appointed by the County Council, was *ultra vires*, hence the amendment. See *Eastern District Committee of Dumbarton County Council and Others* v. *Young and Others*, 19th October, 1893, 21 R. 12; 31 S.L.R. 22.

(10.) Upon the formation of a special lighting district under the provisions of this section it shall be lawful for the district committee[1] to adopt the Burghs Gas Supply (Scotland) Act, 1876,[2] and any Act amending the same, but in such case the provisions of the principal Act[3] with respect to capital, expenditure, borrowing, and audit of accounts shall apply in lieu of the corresponding provisions of the former Acts or of this section; and in the application of the former Acts the expression "burgh" shall be construed to

39 & 40 Vict. c. 49.

mean special lighting district, "commissioners," "town council," and "commissioners of police" to mean district committee, and "elector" and "ratepayer" to mean a person registered as a county elector the subject of whose qualification is situated within the special lighting district. Sec. 44 (10).

1. There seems no reason to omit the County Council where there is no District Committee. The words "or County Council as the case may be," as in previous sub-sections, may be implied.

2. Sec. 4 of the Burghs Gas Supply Act provides that, on a resolution to adopt the Act, the majority of the members present at a meeting called for the purpose may appoint a day not earlier than the 3rd and not later than the 30th lawful day after the completion of the next ensuing annual election of councillors to resume consideration of such resolution.

The above sub-section of the 1894 Act provides for the adaptation of the provisions of the Gas Act, but omits any reference to the different circumstances of the elections of the two authorities, and the question arises whether in the application of the Gas Acts by the District Committee the word "triennial" must be substituted for the word "annual." There is no authority for the substitution, but the Board took the view that the conditions laid down in the Gas Act, that an election must intervene between the preliminary resolution to adopt the Act and the meeting to actually adopt it, could not be ignored. (11th Report, 1905, p. xlvi.) It follows, therefore, that District Committees are precluded from taking proceedings towards adopting the Gas Act till near the time for the triennial election of county councillors.

3. See secs. 18 (6) and 67 to 70 of the Local Government (Scotland) Act, 1889.

Valuation roll to show special districts.

45.—(1.) The assessor of a county in making up the valuation roll of the county shall distinguish[1] in the valuation roll lands and heritages situated within the boundaries of each police burgh,[2] each police

Sec. 45 (1). district formed under section fifty-eight of the Police
20 & 21 Vict. c. 72. Act, 1857, each special water supply and special drainage district, each special district formed under section forty-four of this Act, *each special pier and harbour district formed under the Orkney and Zetland Small Piers and Harbours Act*,[3] and any part of a parish for which a landward committee is constituted in terms of this Act.

1. In the case of a farm, of which the buildings and a few acres were within the special district, it was held that the proper mode of assessment, for the purposes of the provisions of this sub-section, was to take a proportionate part of the whole rent, and not to value the farm as a separate entity. *Irvine* v. *Assessor for Aberdeen*, 17th March, 1897, 24 R. 741; 34 S.L.R. 622.

2. The term "police burgh" is defined in sec. 54.

3. The words in italics represent the extension effected by sec. 4 of the Orkney and Zetland Small Piers and Harbours Act, 1896.

30 & 31 Vict. c. 80. (2.) The provisions of section five[1] of the Valuation of Lands (Scotland) Amendment Act, 1867, as
50 & 51 Vict. c. 51. extended by the Valuation of Lands (Scotland) Amendment Act, 1887, with regard to separate valuations of portions of railways, waterworks, gasworks, and other undertakings included within the limits of burghs, towns, or populous places, shall extend to counties outwith the boundaries of police burghs in like manner as if they were herein re-enacted, with the substitution of the expression "county clerk" for "town "clerk, or clerk of the commissioners, or trustees of "police," and of "police district formed under
20 & 21 Vict. c. 72. "section fifty-eight of the Police Act, 1857, special "water supply district, special drainage district,

"special district formed under section forty-four of "the Local Government (Scotland) Act, 1894, and any "part of a parish for which a landward committee is "constituted in terms of the said Act," for "burghs, "towns, and populous places." Sec. 45 (2).

1. This section, as amended by the Valuation Act, 1894, provides, with the necessary modifications, as follows:—

"Sec. 5. Separate valuation to be assigned, if required before 1*st November* in each year, to *police district formed under section fifty-eight of the Police Act*, 1857, *special water supply district, special drainage district, special district formed under section forty-four of the Local Government (Scotland) Act*, 1894, *and any part of a parish for which a landward committee is constituted in terms of the said Act*, in which a general or local police Act is in force.

"The assessor of railways and canals shall, if required as hereinafter provided, specify and assign separately the value of those portions of railways included within the limits of *police district formed under section fifty-eight of the Police Act*, 1857, *special water supply district, special drainage district, special district formed under section forty-four of the Local Government (Scotland) Act*, 1894, *and any part of a parish for which a landward committee is constituted in terms of the said Act*, which have adopted or shall hereafter adopt the provisions of the Acts of the thirteenth and fourteenth Victoria, chapter thirty-three, or of the twenty-fifth and twenty-sixth Victoria, chapter one hundred and one, or in which any local police Act is or may hereafter be in force: Provided always, that it shall not be necessary for the said assessor to assign separately the value of the portions of railways included within the limits of *police district formed under section fifty-eight of the Police Act*, 1857, *special water supply district, special drainage district, special district formed under section forty-four of the Local Government (Scotland) Act*, 1894, *and any part of a parish for which a landward committee is constituted in terms of the said Act*, in terms of this section, unless on or before the *first day of November* in each year the *county clerk* thereof shall have required him so to assign the same; and such

Sec. 45 (2). *county clerk*, when making such requisition, shall be bound to state the lineal measurement of the portions of the railway or railways belonging to or leased by any railway company, and forming part of the undertaking thereof, situated within the limits of such *police district formed under section fifty-eight of the Police Act*, 1857, *special water supply district*, *special drainage district*, *special district formed under section forty-four of the Local Government (Scotland) Act*, 1894, *and any part of a parish for which a landward committee is constituted in terms of the said Act*, and the assessor shall satisfy himself as to the correctness of such measurement; and the said assessor, immediately on the completion of the valuation roll made up by him under the recited Acts and this Act, shall transmit to each county clerk, so requiring him as aforesaid, a certified copy of the valuation, taken from such valuation roll of the lands and heritages within such *police district formed under section fifty-eight of the Police Act*, 1857, *special water supply district*, *special drainage district*, *special district formed under section forty-four of the Local Government (Scotland) Act*, 1894, *and any part of a parish for which a landward committee is constituted in terms of the said Act*, belonging to or leased by and forming part of the undertaking of such company; and such valuation relating to such company shall be engrossed by such *county clerk*, in the roll or book of assessment of such *police district formed under section fifty-eight of the Police Act*, 1857, *special water supply district*, *special drainage district*, *special district formed under section forty-four of the Local Government (Scotland) Act*, 1894, *and any part of a parish for which a landward committee is constituted in terms of the said Act*, made up in terms of the Acts of the thirteenth and fourteenth Victoria, chapter thirty-three, or of the twenty-fifth and twenty-sixth Victoria, chapter one hundred and one, or of the local Act in force in *police district formed under section fifty-eight of the Police Act*, 1857, *special water supply district*, *special drainage district*, *special district formed under section forty-four of the Local Government (Scotland) Act*, 1894, *and any part of a parish for which a landward committee is constituted in terms of the said Act*, and such valuation shall be authenticated by the signature of such *county clerk*, and shall be thenceforward deemed and taken to be a part of such roll or book of assessment of such

police district formed under section fifty-eight of the Police Act, 1857, *special water supply district, special drainage district, special district formed under section forty-four of the Local Government (Scotland) Act*, 1894, *and any part of a parish for which a landward committee is constituted in terms of the said Act.*"

Additional powers to alter parish areas.

46. An order of the Secretary for Scotland, under section fifty-one of the principal Act,[1] for altering the boundaries[2] of any parish or for uniting several parishes or parts of parishes[3] into one parish by the creation of a new parish or otherwise, or annexing one or more of such parishes or parts of parishes to a larger parish, or for dividing any parish or for uniting any subdivision of a parish with any other parish, shall have effect for all purposes[4] whether county council, justice, sheriff, militia, parochial board, parish council, school board, local authority, or other, save as herein-after provided. Before making any such order, the Secretary for Scotland shall consult with the authorities concerned, and, upon the application of any one or more of such authorities, shall cause a local inquiry in terms of the principal Act[5] to be held, and shall cause the proposed order to be published in the *Edinburgh Gazette*, and in such other manner as to make the same known to all persons interested, and shall consider all objections and representations respecting such order, and may, after the expiry of not less than forty days from the date of the publication of the proposed order in the *Edinburgh Gazette*, finally make the order and cause the same to be forthwith published in the *Edinburgh Gazette*, and such order shall thereafter have effect as if enacted by Parliament unless or until

Sec. 46. revoked or modified by subsequent order in terms of this section. In addition to the provisions of the principal Act any such order may be made on the representation of a *parochial board or*[6] parish council, *or the commissioners of a police burgh*,[6] or a school board.

An order of the Secretary for Scotland under the powers conferred by section fifty-one of the principal Act or this section may, without prejudice to the generality of the aforesaid powers, provide for all or any of the matters specified in sub-section six of section forty-nine of the principal Act.[7]

The words "in the county" occurring in sub-section (*e*) of section fifty-one of the principal Act are hereby repealed, and the said section shall be read as if for the words "county burgh or parish," occurring in proviso (ii.) thereof, there were substituted the words "county or burgh"; and the words "this Act," in sub-section (*g*) of the said section, and in sections ninety-five and ninety-six of the principal Act, shall be construed as meaning "the Local Government "(Scotland) Acts."

1. Sec. 51 of the Local Government (Scotland) Act, 1889, as amended by this Act and the Local Government (Scotland) Act, 1908, provides:—

"51. On the representation of a County Council or of a Town Council the Secretary for Scotland may at any time after the expiry of the powers of the Boundary Commissioners by order provide for all or any of the following things:—

"(*a*) For altering the number of County Councillors, the number, contents, and boundaries of electoral divisions, and the assignment of County Councillors to counties and burghs;

"(*b*) For altering the boundaries of the county;

"(*c*) For altering the boundaries of any burgh or of any parish situate or partly situate in the county;

"(*d*) For uniting several parishes or parts of parishes into one parish, or annexing one or more of such parish or parishes or parts of parishes to a larger parish; and any parish so formed by a union of parishes or parts of parishes, or enlarged by annexation shall for all purposes be deemed to be one parish;

"(*e*) For dividing any parish which by reason of its inconvenient extent, or by reason of its forming part of, or having within its boundaries, or lying partly within or partly without a burgh, or a police burgh, it seems expedient to divide, and for uniting all or any of such subdivisions of the parish with other parishes;

"(*f*) For the proper adjustment* and distribution of the powers, property, liabilities, debts, officers, and servants of any local authority, consequential on any consolidation, alteration of boundaries, or other act done in pursuance of this section; and

"(*g*) Generally for doing any matter or thing whatever, whether similar or not to those above mentioned, which may be required or be expedient for the proper carrying into effect the purposes of this Act and the settlement of local differences:†

"Provided as follows:—

"(i.) * * * * * *

"(ii.) If an order under this section alters the boundaries or contents of any county or burgh, it shall be provisional only, and shall not have effect unless confirmed by Parliament; and

"(iii.) Provision shall be made in any order under this section for preserving the rights of

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* See note to sec. 49 of the Local Government (Scotland) Act, 1889, p. 176.

† In one instance, where it was considered advisable to change the name of a civil parish, application was made under sec. 51 to the Secretary for Scotland, and the necessary Order issued. (4th Nov., 1895. Parish of Monzie, now Logiealmond.)

Sec. 46.

creditors and all persons having vested interests, and whose rights would otherwise be affected by any alteration made in pursuance of this section;

"(iv.) This section shall be in addition to, and not in derogation of, any provisions in force at the passing of this Act in respect of the union, disjunction, or erection of parishes."

The operative clauses of the Orders of the Boundary Commissioners are printed in the "Councillor's Manual" (Wm. Green & Sons, Edinburgh). For full text of Orders with explanations, see Shennan's "Boundaries of Counties and Parishes in Scotland" (Wm. Green & Sons). The Orders issued by the Secretary for Scotland under sec. 51 of the Local Government (Scotland) Act, 1889, and sec. 46 of the 1894 Act, are also published in the "Councillor's Manual."

2. The maps of the Ordnance Survey are not conclusive as to boundaries. See *Knox, Inspector of Buittle*, v. *Hewat, Inspector of Kelton*, 12th January, 1870, 8 M. 397.

3. It was unsuccessfully contended that the power conferred on the Secretary for Scotland did not permit division alone, but only division coupled with annexation, and that it was *ultra vires* of him to disjoin a portion of one parish and form it into a separate parish. It was further contended that a combination parish formed under sec. 16 of the Poor Law Act, 1845, was not a parish to which the Local Government Act, 1889, applied. The contention, however, was not upheld. *Dundee Combination Parish Council* v. *The Secretary for Scotland*, 31st May, 1901, 3 R. 848; 38 S.L.R. 619; 9 S.L.T. 54; 1901, P.L.M. 469.

4. See note to sec. 30 (1). The Secretary for Scotland was advised that he could not unite parishes under this section for certain specified purposes only. Opinion of Counsel, 2nd June, 1909, 16 Co. Co. Cases, 183. See also note 5 to sec. 54.

5. Sub-secs. (1) and (3) of sec. 93 of the Local Government (Scotland) Act, 1889, provide:—

"93.—(1) Where the Secretary for Scotland is authorised or required by this Act to make any inquiry, to make or confirm any order or bye-law, or to give any consent, sanction, or approval to any matter, to determine any

difference, or make any adjustment, or otherwise to act under this Act, he may or shall, as the case may be, cause a local inquiry to be held by any person nominated by a writing under his hand, and such person shall be entitled to summon witnesses and examine them on oath, and call for the production of books, documents, and accounts. **Sec. 46.**

* * * * * * * * *

"(3) Where the Secretary for Scotland causes any local inquiry to be held under this Act, the costs incurred in relation to such inquiry, including the remuneration of any person appointed to hold the same, not exceeding three guineas a day, shall be paid by the Councils and other authorities concerned in such inquiry, or by such of them and in such proportions as the Secretary for Scotland may direct, and the said Secretary may certify the amount of the costs incurred, and any sum so certified shall be a debt to the Crown from the Council or authority directed to pay the same."

Any expenses under this section, so far as they are payable by a Parish Council, fall on the poor rate.

6. The words in italics are now obsolete. See sec. 21 of this Act and sec. 5 of the Town Councils Act, 1900.

7. Sub-sec. (6) of sec. 49 of the Local Government (Scotland) Act, 1889, provides as follows:—

"49.—(6.) An order . . . may provide for all or any of the following matters, that is to say,—

"(*a.*) may provide for the abolition, restriction, establishment, or extension of the jurisdiction of any authority in or over any part of the area affected by the order, and for the adjustment or alteration of the boundaries of such area, and for the constitution of the authorities therein, and may deal with the powers and rights of authorities therein and with any offices therein, and may determine the status of any such area as a component part of any larger part, and for the election of representatives in such area;

"(*b.*) may make temporary provision for meeting the debts and liabilities of the various authorities affected by the order, and for the management of their property;

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"(*c.*) may provide for all matters which appear to the Commissioners necessary or proper for giving full effect to the order.

"When an order under this Act has taken effect, the Boundary Commissioners may provide for the adjustment* and disposal of the property, debts, and liabilities of the various authorities affected by the order, and for the settlement of differences arising out of the order." (52 & 53 Vict. c. 50, sec. 49, sub-sec. (6).)

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* See sec. 50 of the Local Government (Scotland) Act, 1889, and the following cases:—*Parish Council of Borthwick* v. *Parish Council of Temple*, 17th July, 1891, 18 R. 1190; 1891, P.L.M. 585; *Parish Council of Galashiels* v. *Parish Council of Melrose*, 19th January, 1894, 21 R. 391; 1 S.L.T. 461; 1894, P.L.M. 120; *Caterham Urban District Council* v. *Godstone Rural District Council*, 2nd May, 1904 (H.L.), 11 Co. Co. Cases, 72; 20 T.L.R. 481; *Midlothian County Council* v. *The Magistrates of Musselburgh*, 28th January, 1911; 1911, S.C. 463; 1 S.L.T. (1911) 167. See also Opinion of Counsel, 20th October, 1903, 10 Co. Co. Cases, 118. It has repeatedly been held that the mere loss of assessable area by one authority was not in itself a sufficient reason for opposing the extension of boundary by another authority. In the Musselburgh case referred to above, the County Council had raised loans secured on the county rates and repayable by instalments, and they sought to recover from the burgh the amount of these loans proportional to the assessable area taken over by the burgh. The Sheriff, acting as arbiter, refused the claim on the ground that what was desired was not an "adjustment of liabilities" in the sense of the Act, but compensation for loss of assessable area. The Court, however, held that such loans were "liabilities" within the meaning of the Act, which might be proper subjects for adjustment, and remitted the case to the Sheriff to allow parties to readjust their pleadings.

Reference may also be made to the recommendations in the Report (paragraphs 10, 11, 15, and 19) from the Joint Select Committee of the House of Lords and the House of Commons on the Local Government Acts, 1888 and 1894; and the Local Government (Scotland) Acts, 1889 and 1894; (Financial Adjustments) Parliamentary Paper 264, Session 1911, price 3s. 6d.

In regard to the opposition by Parish Councils to Parliamentary Bills, the Board issued the following instructions:—

"In the course of the Audit for the past year the Board have had under consideration the question of the legality of defraying out of the Rates the cost of opposing Bills in Parliament, and they deem it desirable, for the information and guidance of Parish Councils, to state the course which in their opinion should be followed to ensure economy and obviate the risk of incurring illegal expenditure in the conduct of such opposition.

"Where Parish Councils resolve to oppose any Bill or Provisional Order they ought, in the first instance, to make a representation to the Board setting forth their objections. These will be considered by the Board, and, if the circumstances are such as in their opinion to justify this course, they will transmit the representation to the Sec-

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47.[1]—(1.) Every rate and requisition for sums of money made before the fifteenth day of May in the year one thousand eight hundred and ninety-five, may be levied and collected, and proceedings for the enforcement thereof may be taken in like manner, as nearly as may be, as if this Act had not passed.

Current rates.

(2.) The accounts of all moneys received or expended before the fifteenth day of May in the year one thousand eight hundred and ninety-five, shall be audited and other consequential proceedings taken in like manner as nearly as may be as if this Act had not passed, and every officer whose duty it is to make up any accounts, or to account for any portion of the moneys received or expended in any account shall, until the audit is completed, be deemed for the purpose of such audit to continue in office and be bound to perform the same duties and render the same accounts as if this Act had not passed.

1. The provisions of this section are now spent.

Transfer of property.

48.—(1.) All such property as belongs, or would, but for the passing of this Act, belong to, or be vested in, or held in trust for, any authority whose powers and duties are, by or in pursuance of this Act, trans-

retary for Scotland. In most cases no further action will be necessary, and the subsequent procedure may be left to the Secretary for Scotland, who will forward the representation to the Committee or other quarter, or take such alternative step as may be called for in the circumstances. But in some cases, such as the defence of an actual patrimonial right, where further action is essential or desirable, it will be open to the Parish Council to present a specific petition against the preamble of the Bill, praying to be heard by Counsel and witnesses, the requisite expenditure having previously been assented to by this Department as necessary to secure the protection of a threatened vested interest." (Circular of 5th April, 1904.)

Sec. 48. ferred to a parish council shall, from and after such transference, pass to, and vest in, and be held in trust for, such parish council, subject to all debts and liabilties affecting the same, and shall be held by the parish council for the purposes for which such property is or would have been held, so far as such purposes are not modified by this Act; and if any question shall arise between any such authority and a parish council as to the heritable or movable property transferred by or in pursuance of this Act, the same, failing agreement, shall be determined by the Board.[1]

1. The Board have not been called on to determine any questions under this sub-section.

(2.)[1] The parish council[2] shall have full power to manage, alter, and enlarge, and, with the consent of the Board, to alienate lands and heritages transferred[3] by this section, and may from time to time provide such accommodation and rooms, and such furniture, books, and other things as they may reasonably require for the transaction of their business.[4]

1. See notes to sec. 24 (2).

2. The expression "Parish Council" does not include a Landward Committee.

3. The Board's consent is required only in the event of the alienation of property transferred to the Parish Council under sec. 48 (1). Compare sec. 24 (2). Property neither transferred under sec. 48 (1) nor provided or acquired under Part IV. of the Act may apparently be alienated without the Board's consent.

4. This sub-section confers no power to borrow. The Board point out in their 4th Annual Report, p. xxix., that "a belief existed that it was competent for the Parish Council to borrow to meet the expense of building offices, &c., provided that they did not hypothecate the rates. This

belief received support from opinions expressed by our predecessors, the Board of Supervision, as well as from opinions of counsel. Our advice was asked as to the competency of such action, and we deemed the question of such importance that we submitted it for the opinion of the law officers of the Crown. We were advised that the Parish Council of a parish partly landward and partly burghal, borrowing money for the erection of offices, either on the security of the building or otherwise, would be liable to be interdicted by any ratepayer, there being no statutory authority for such borrowing or for applying the rates to the payment of the interest on the bond."

The difficulty is usually met by an arrangement with the Landward Committee, who resolve to provide the buildings and to borrow therefor under the powers conferred by sec. 24 (1) (*a*) and sec. 28, the Parish Council undertaking to pay annually in the name of rent such a sum as will cover the maintenance of the fabric, the annual repayment of principal, and the interest on the loan. In burghal parishes a similar arrangement is entered into with private parties.

Transfer of debts and liabilities.

49. All debts and liabilities of any authority, whose powers and duties are transferred by or in pursuance of this Act to a parish council, shall become debts and liabilities[1] of such council, and shall, from and after such transfer and subject to the provisions of this Act, be defrayed by them out of the like funds out of which they would have been defrayed if this Act had not passed.

1. The expression "liabilities" is defined in sec. 54.

Existing officers and servants.

50. All persons who on the fifteenth day of May in the year one thousand eight hundred and ninety-five[1] hold office as inspector of the poor of the parish or collector of poor rates, or are officers of a parochial board, under any Acts of Parliament, or are servants of such board and perform any duties in respect of the business transferred by, or in pursuance of, this

Sec. 50.

Act to a parish council, shall thereafter become the officers and servants of the parish council.[2]

1. That was the day upon which Parish Councils took office.

2. Auditors appointed by Parochial Boards to audit their accounts were held not to become, in virtue of this section, officers or servants of the Parish Council.

Tenure and duties of officers transferred to parish council.

51.—(1.) The officers and servants of any authority who hold office at the passing of this Act, and who by or in pursuance of this Act become officers and servants of a parish council (in this Act referred to as existing officers), shall hold their offices by the same tenure,[1] and upon the same terms and conditions, as if this Act had not passed, and while performing the same duties shall receive not less salaries or remuneration and be entitled to not less pensions (if any) than they would have received or been entitled to if this Act had not passed: provided that any re-arrangement of the duties and remuneration of existing medical officers, holding office under the Poor Law (Scotland) Act, 1845, shall be subject to the approval of the Board.

8 & 9 Vict. c. 83.

1. The parishes of Arbroath and St. Vigeans were united into one parish by the Secretary for Scotland under sec. 51 of the Local Government (Scotland) Act, 1889, and sec. 46 of this Act, and the Order provided that the officers of the old parishes were to be transferred to the new. The Parish Council of the united parish of Arbroath and St. Vigeans, however, appointed the inspector of poor of the old parish of St. Vigeans to be inspector of the new parish, and refused to recognise the inspector of the old parish of Arbroath. It was maintained (1) that the old parishes having been abolished, their officers had also ceased to exist; and (2) that the clause in the Order transferring existing officers to the new Parish Council was invalid, in respect that it

did not provide for the adjustment and distribution of their duties. The Court held that the Order was valid, and that the inspectors of the pre-existing parishes continued to hold office as servants of the new Parish Council. *Seaton* v. *Parish Council of Arbroath and St. Vigeans*, 28th May, 1896, 23 R. 763; 4 S.L.T. 25; 33 S.L.R. 583; 1896, P.L.M. 352. **Sec. 51.**

(2.) Subject to any general regulations of the Board, a parish council[1] may distribute the business to be performed by existing officers and may combine their duties in such manner as the council may think expedient, and every existing officer shall perform such duties in relation to such business as may be directed by the council.[1] Provided that if any existing inspector of poor[2] is aggrieved by such distribution of business, or by the imposition or withdrawal of any duties, he may, within one month[3] after the date of any resolution of the council distributing such business or imposing or withdrawing such duties, appeal to the Board,[4] whose decision shall be final.

1. This section does not apply to a Landward Committee.

2. *I.e.*, an inspector of poor holding office at the passing of this Act, 25th August, 1894.

3. An existing inspector of poor (see note 2) may appeal to the Board at any time after the passing of the Act against the imposition or withdrawal of any duties provided he does so within one month after the date of the resolution of the Council imposing or withdrawing the said duties.

4. It is not clear what course of action is open to the Board in such cases, or whether they can enforce any decision at which they may arrive. Presumably the intention is that the Board should regulate the duties that an aggrieved existing inspector may have to perform. In the event of the Parish Council or the inspector failing to implement the Board's directions, it would presumably be necessary to apply to the Court for an order calling upon the recalcitrant party to fulfil their duty.

Sec. 51.

(3.) Any parish councils, or parish councils and county councils or district committees or town councils *or burgh commissioners*,[1] may, from time to time, join in making such arrangements with regard to the conduct and management of their business, including the collection of rates,[2] whether leviable by a parish council, or by a county council, or town council, *or burgh commissioners*,[1] and the distribution of such business among their officers, as shall seem to them, in the whole circumstances of the case, to be most effective and economical.

1. The words in italics are now obsolete. See sec. 5 of the Town Councils Act, 1900.

2. In several instances a joint collection of rates is in operation, and works very satisfactorily. Care must be taken that the arrangement is not of such a nature as to render impracticable the statutory requirements as to audit. Separate books should be kept for the parish, and any arrangement must be subject to the condition that the assessment roll for the parish, and the collectors' books relating thereto, shall be duly sent to the clerk to the Parish Council in terms of this sub-section.

Saving for pending actions, &c.

52.—(1.)[1] If at the time of the transfer, any action or proceeding, or any cause of action or proceeding, is pending or existing by or against any authority in relation to any powers, duties, liabilities, or property by this Act transferred to the parish council, the same shall not be in anywise prejudicially affected by reason of such transfer, but may be continued, prosecuted, and enforced by or against the parish council, as successors of such authority, in like manner as if such transfer had not taken place.

1. The provisions of this sub-section are now spent.

(2.) All contracts, deeds, bonds, agreements, and other instruments entered into or made and subsisting at the time of the transfer,[1] and affecting any such powers, duties, liabilities, or property of any authority as are by this Act transferred to a parish council, shall be of as full force and effect against or in favour of the parish council, and may be enforced as fully and effectually as if instead of such authority the said parish council had been a party thereto. Sec. 52.

1. See, however, note 2 to sec. 22 and the case referred to therein.

53. Nothing done in pursuance of this Act shall prejudicially affect any securities granted, before the time of the transfer, on the credit of any rate or property by this Act transferred to a parish council, and all such securities, as well as all unsecured debts, liabilities, or obligations lawfully incurred by any authority, body, or person, in the exercise of any power or in relation to any property transferred from them to the parish council under this Act, shall be discharged, paid, and satisfied by the parish council. Saving for securities in discharge of debts.

54. Expressions used in this Act have the same meaning, if not inconsistent with the context,[1] as expressions used in the principal Act:[2] Provided that, if not inconsistent with the context— Definitions.

The expression "police burgh" in the Local Government (Scotland) Acts, the Local Taxation (Customs and Excise) Act, 1890, the Roads and Streets in Police Burghs (Scotland) Act, 1891, and the Education and Local Taxation Account (Scotland) Act, 1892, has the 53 & 54 Vict. c. 60. 54 & 55 Vict. c. 32. 55 & 56 Vict. c. 51. 55 & 56 Vict. c. 55.

Sec. 54. meaning assigned to it in the Burgh Police (Scotland) Act, 1892:[3]

The expression "municipal register" includes the register of voters for the election in a police burgh of burgh commissioners:[3]

The expressions "municipal election," "municipal electors," and "municipal wards" include the election of burgh commissioners in a police burgh, the voters at, and the wards constituted for, such election respectively:[4]

The expression "town clerk" includes the clerk to the burgh commissioners of a police burgh:[4]

The expression "secretary" includes assistant secretary:[5]

The expression "parish" means a parish quoad civilia which is at the passing of this Act or may hereafter be constituted a separate parish for the purposes of settlement and relief of the poor, and includes a combination of parishes within the meaning of section sixteen of the Poor Law (Scotland) Act, 1845:[6]

The expression "burghal parish" means a parish which is wholly comprised within the boundaries of a burgh, and the expression "landward parish" means a parish no part of which is comprised within the boundaries of a burgh:[7]

The boundaries of burghs for the purposes of this Act shall be held to be the boundaries thereof as the same are or may be ascertained, fixed, or determined for police purposes, under the provisions contained in any general or local Act of Parliament, or, when no police assessment is levied, as the same are or may be

ascertained, fixed, or determined for municipal purposes:[8] Sec. 54.

The expression "burghal part of a parish" means any part of a parish comprised within the boundaries of a burgh, and the expression "landward part of a parish" means any part of a parish not comprised within the boundaries of a burgh:[9]

The expression "Public Health Acts" means the Public Health (Scotland) Act, 1867,[10] and any Act or Acts amending the same:

The expression "Education Acts" means the Education (Scotland) Act, 1872, and any Act or Acts amending the same:

The expression "burgh" means any royal or parliamentary burgh, and shall include the burgh of Coatbridge:[11]

The expression "ecclesiastical charity" includes a charity the endowment whereof is held for some one or more of the following purposes:—

(*a*) for theological instruction or for the benefit of any theological institution; or

(*b*) for the benefit of any ecclesiastical person or officer as such; or

(*c*) for use, if a building, as a church, chapel, mission hall or room, or Sunday school, or otherwise by any particular church or denomination; or

(*d*) for the maintenance, repair, or improvement of any such building as aforesaid, or for the maintenance of divine service therein; or

Sec. 54.

(*e*) otherwise for the benefit of any particular church or denomination, or of any members thereof as such:

Provided that where any endowment of a charity, other than a building held for any of the purposes aforesaid, is held in part only for some of the purposes aforesaid, the charity, so far as that endowment is concerned, shall be an ecclesiastical charity within the meaning of this Act.[12]

1. See note 3 to sec. 41.

2. The following definitions are taken from sec. 105 of the Local Government (Scotland) Act, 1889:—

Interpretation of certain terms.

"105. In this Act, if not inconsistent with the context, the following terms have the meanings herein-after respectively assigned to them; that is to say:—

"The expression 'county' means a county exclusive of any burgh wholly or partly situate therein, and does not include a county of a city.

"The expression 'Treasury' means the Commissioners of Her Majesty's Treasury.

"The expression 'sheriff' means the sheriff of the county, and includes sheriff substitute.

"The expression 'assessor' means the assessor acting under the Registration Acts, or the Valuation Acts, as the case may be.

"The expression 'Police Act, 1857,' means the Act of the twentieth and twenty-first Victoria, chapter seventy-two.

"The expression 'existing' means existing at the time specified in the enactment in which the expression is used, and if no such time is expressed, then at the day appointed to be for the purpose of such enactment the appointed day.

"The expression 'person' includes any body of persons whether corporate or unincorporate.

"The expression 'property' includes all property, heritable and movable, and all interests therein.

"The expression 'powers' includes rights, jurisdictions, capacities, privileges, and immunities.

"The expression 'duties' includes responsibilities and obligations.

Sec. 54.

"The expression 'liabilities' includes liability to any proceeding for enforcing any duty, and all debts and liabilities to which any authority are or would be, but for the passing of this Act, liable or subject, whether accrued due at the date of the transfer by this Act effected or subsequently accruing, and including any obligation to carry or apply any money to any sinking fund, or to any other particular purpose.

"The expression 'costs' includes expenses.

"The expression 'rate' includes assessment.

"The expression 'pension' includes any superannuation allowance, gratuity, or other payment made on the retirement of any officer."

3. Sec. 4 of the Burgh Police Act, 1892, defines "police burgh" to mean "a populous place the boundaries whereof have been fixed under the General Police Acts or under any local Police Act or under this Act."

4. In view of sec. 5 of the Town Councils Act, 1900, these definitions are now obsolete. Sec. 4 of that Act defines "municipal register" to mean "the register of persons entitled to vote in the election of town councillors." See also the definitions of "municipal area" and "municipal boundary" in the same section.

5. The expression "secretary" has the same meaning in the Public Health Act, 1897 (sec. 3 of that Act). See also sec. 5 of this Act and notes.

6. Sec. 16 of the Poor Law Act empowers the Board to combine parishes for poor law purposes. Such a combination would not now, however, in the opinion of the Board, be for poor law purposes only, but for all the purposes of the Local Government Act, 1894. (15th Report, 1909, p. xxxiii.) Power to dissolve a combination is given by the Combination of Parishes Dissolution (Scotland) Act, 1861. See the case of *Dundee Combination Parish Council* v. *The Secretary for Scotland*, referred to in note 3 to sec. 46.

7. The omission of the words "or police burgh" after the words "burgh" appears to be an error, because for all the purposes of the Act police burghs are excluded from the landward area. (See sec. 23 (2).)

8. That is to say, in Royal and Parliamentary burghs the area to be taken for the purposes of this Act is the municipal

Sec. 54. area or the area over which police assessments are levied. See *Lower Ward of Lanarkshire* v. *Rutherglen* (H.L.), 5th August, 1902, 4 F. 35; 39 S.L.R. 857; 10 S.L.T. 234; 9 Co. Co. Cases, 65.

9. See note 6, *supra*.

10. Now 1897.

11. Coatbridge was given all the privileges of a Royal burgh by the Coatbridge Burgh Act, 1885.

12. See notes to sec. 30 (1).

Repeal.

55. The Acts specified in the First Schedule to this Act are hereby repealed to the extent mentioned in the third column and as from the dates respectively specified in the fourth column of that Schedule, and so much of any Act as is inconsistent with this Act is also hereby repealed.

PART VII.—Transitory Provisions.[1]

Transitory provisions for first election.

56. *With respect to the first election of parish councillors, the following provisions shall have effect; that is to say,—*

(1.) *The first election of parish councillors shall take place in every parish on the first Tuesday of April in the year one thousand eight hundred and ninety-five. The parish councillors then elected shall enter office on the fifteenth day of May following such election, and shall go out of office, in burghal parishes and in parishes wholly comprised within a police burgh or within a burgh and a police burgh, on the first Tuesday of November, and in all other parishes on the first Tuesday of December, both in the year one thousand eight hundred and ninety-eight.*

Sec. 56.

(2.) *Before the first election of parish councillors, and not later than the twenty-eighth day of February in the year one thousand eight hundred and ninety-five, a list of persons qualified to be parish electors shall be prepared, revised, and completed for each county (exclusive of any police burgh, or part thereof,) and the provisions of the Local Government (Scotland) Acts respecting a county council register shall apply to such list, subject to such alterations of dates and such other necessary modifications as may be prescribed by the Secretary for Scotland in any general order under his hand and seal. Such list, when completed, shall be deemed to be the county council register for the time being within the meaning of sub-section eight of section twelve of this Act.*

(3.) *The provisions of sub-sections two and three of section twelve of this Act shall not apply to a municipal register or to the register of voters for the election in a police burgh of burgh commissioners coming into force in the month of November, in the year one thousand eight hundred and ninety-four, unless so applied by order under the seal of the town council, or in a police burgh of the burgh commissioners. Provided that before the first election of parish councillors and not later than the twenty-eighth day of February in the year one thousand eight hundred and ninety-five a list of persons qualified to be parish electors shall be prepared, revised, and completed for each burgh and police burgh, and the provisions of this Act respecting a municipal register or the register of voters for the election in a police burgh of burgh commissioners shall*

Sec. 56. *apply to such list subject to such alterations of dates and such other necessary modifications as shall be prescribed by the Secretary for Scotland in any general order under his hand and seal. Such list when completed shall be deemed to be the municipal register of the burgh, or register of voters for the election in the police burgh of burgh commissioners, for the time being, within the meaning of sub-section eight of section twelve of this Act.*

Provided that nothing contained in this or the immediately preceding sub-section shall affect the date at which any parliamentary or municipal register of voters, or register of voters for the election in a police burgh of burgh commissioners, is fixed to come into operation.

(4.)[1] *In a landward parish and in the landward part of a parish partly landward and partly burghal, except within any parish or part of a parish co-extensive with a police burgh or part thereof, the provisions of section fourteen (excepting sub-sections one and three) of this Act shall apply to the first election of parish councillors, and the returning officer shall be appointed by the county council at their general meeting in the month of December in the year one thousand eight hundred and ninety-four, and the election shall be held in the parish wards fixed by or under the provisions of this Act as nearly as may be in the same manner as an election of county councillors.*

1. See note 1 to sec. 10 (3).

(5.) *In a burghal parish and in the burghal part of a parish partly landward and partly burghal, and in*

any parish or part of a parish co-extensive with a police burgh or part thereof, the provisions of section fifteen (excepting sub-sections one and three) of this Act shall apply to the first election of parish councillors, and the returning officer shall be appointed by the town council, or in a police burgh by the burgh commissioners, not later than the thirty-first day of December in the year one thousand eight hundred and ninety-four, and the election shall be held in the parish wards (if any) fixed by or under the provisions of this Act, as nearly as may be in the same manner as an election of town councillors, or, in a police burgh, of burgh commissioners.

(6.) *The expenditure incurred in the registration of parish electors shall be deemed to form part of the expenditure incurred in the election of parish councillors.*

(7.) *The members of a parish council first elected under this Act shall, on the second Thursday of April, meet as a provisional parish council, with power to arrange for bringing this Act into operation, and the provisional parish council shall, at that or a subsequent meeting, make provision for the performance of the duties of such parish council until the first meeting of such council; and the first meeting of the parish council shall be held on such day not later than the twenty-second day of May as shall be fixed by the provisional parish council, and such meeting shall be deemed to be the statutory meeting of the parish council for the year one thousand eight hundred and ninety-*

Sec. 56. *five, and shall be summoned by the inspector of poor in the manner provided by sub-section two of section seventeen of this Act.*

(8.) *The parochial boards holding office at the commencement of this Act, shall, notwithstanding any provision to the contrary, retain office until the fifteenth day of May in the year one thousand eight hundred and ninety-five.*

1. These provisions are spent, and are reprinted merely for purposes of reference.

SCHEDULES.

SCHEDULE I.

ENACTMENTS REPEALED.

1. Session and Chapter.	2. Short Title.	3. Extent of Repeal.	4. Date from which Repeal takes effect.
25 & 26 Vict. c. clvii.	Glasgow Barony Parochial Board Act, 1862.	The whole Act.	The [illegible] commencement of this Act.[1]
52 & 53 Vict. c. 50.	Local Government (Scotland) Act, 1889.	Section one hundred and five so far as it relates to the definition of the expression "police burgh."	
53 & 54 Vict. c. 60.	Local Taxation (Customs and Excise) Act, 1890.	Section six so far as it relates to the definition of the expression "police burgh."	
54 & 55 Vict. c. 32.	Roads & Streets in Police Burghs (Scotland) Act, 1891.	Section seven so far as it relates to the definition of the expression "police burgh."	
52 & 53 Vict. c. 50.	Local Government (Scotland) Act, 1889.	Section twenty-eight, sub-section (2), (i), the words "who is not "married, or who being "married is not living "in family with her "husband."	
44 & 45 Vict. c. 13.	Municipal Elections Amendment (Scotland) Act, 1881.[2]	Section two, the words "who are not married, "and married females "not living in family "with their husbands."	

1. *I.e.*, 25th August, 1894.
2. The whole of this Act is repealed by the Town Councils (Scotland) Act, 1900.

Sched. I.
Sec. 55.

1. Session and Chapter.	2. Short Title.	3. Extent of Repeal.	4. Date from which Repeal takes effect.
8 & 9 Vict. c. 83.	Poor Law (Scotland) Act, 1845.	Section two. Section three. Section four, except so far as it relates to the Secretary. Section five, except from "the Board shall have" to the end. Section six. Section seven. Section eight to "proper "and." Section eleven so far as it requires the consent of a Secretary of State, or Her Majesty's Advocate, to the appointment and the remuneration of a Commissioner or Commissioners.	The date of the establishment of the Local Government Board for Scotland.[3]
30 & 31 Vict. c. 101.	Public Health (Scotland) Act, 1867.[4]	Sections nine, ten, and eleven so far as they require the consent of a Secretary of State or Her Majesty's Advocate to any inquiry or the appointment of a Commissioner. Section fifteen.	
8 & 9, Vict. c. 83.	Poor Law (Scotland) Act, 1845.	Section seventeen, from "and until it shall" to the end. Sections eighteen to twenty-nine, both inclusive. Section thirty, from "and "it shall also be law- "ful" to the end. Section thirty-one. Section thirty-three, from "or for the parochial "board" to "entitled "to attend." Section thirty-eight, the words "or means and "substance." Sections forty-seven and forty-eight.	The fifteenth day of May in the year one thousand eight hundred and ninety-five.
55 & 56 Vict. c. 54.	The Allotments (Scotland) Act, 1892.	Section nine.	
50 & 51 Vict. c. 42.	Public Libraries Consolidation (Scotland) Act, 1887.	Section nine so far as it relates to the audit of the accounts of a parochial board.	

3. *I.e.*, 26th September, 1894.
4. The whole of this Act is repealed by the Public Health (Scotland) Act, 1897.

SCHEDULE II.

Sched. II.

Sec. 17.

We, *A.B.* [*here insert name and place of abode as in the Parish Council register for the parish*], and *C.D.* [*here insert name and place of abode as aforesaid*], hereby propose and nominate *E.F.* [*here insert name and place of abode as aforesaid*] for election as a Parish Councillor [*when the parish is divided into wards, add here* "for the ward," *specifying such ward*] at the next ensuing Parish Council election in the parish of [*specify parish*].

Given under our hand this [*insert date*].

A.B......

C.D......

to be signed also by—

× Candidate.

or by—

× A person duly authorised.[1]

.....

Returning Officer.[2]

SCHEDULE III.

Sched. III.

Sec. 17.

The intimation or nomination of *E.F.* [*here insert name and place of abode of candidate as in the Parish Council register for the parish*] for election as a Parish Councillor [*when the parish is divided into wards, add here* "for the ward," *specifying such ward*] at the next ensuing Parish Council election in the parish of [*specify parish*] is hereby withdrawn.

Given under my hand this [*insert date*].

to be signed by—

× Candidate.

or by—

× A person duly authorised.[1]

To.....

Returning Officer.[2]

1. See note 3 to sec. 16 (1).
2. Sec. 17 (4) provides that the intimation of nomination and notice

Sched. III. Sec. 17.

of withdrawal may be in these forms. It is undesirable, however, that the forms should be addressed to the returning officer when that officer has delegated to some other person his power of receiving such notices, as he is authorised to do by sec. 17 (1). Confusion has arisen by the rigid adherence to the statutory forms in this respect. The name and address of the delegate should appear on the forms in place of those of the returning officer.

SCHEDULE IV.

Sched. IV. Sec. 44.

(1) Expressions occurring in the adoptive sections of the Burgh Police (Scotland) Act, 1892,[1] shall in such sections as adopted, when not inconsistent with the context, have the meanings assigned to them respectively in that Act as read along with this Schedule: Provided that any reference to the burgh surveyor or to the private improvement assessment shall be excluded.

(2) In place of the expressions occurring in the said sections specified in the first column of the list appended hereto, there shall be substituted in such sections as adopted the expressions respectively specified in the second column thereof.

(3) The consent of the Board[2] shall be required to any bye-law made by a District Committee or by a County Council in terms of the said sections as adopted.

(4) Sec. 94 of the principal Act[3] shall apply to any offence against the provisions of the said sections as adopted or any bye-law made thereunder, with the substitution (except where a county is not divided into districts) of the expression "district clerk" for the expression "county clerk" occurring therein.

Sched. IV.

Sec. 44.

List.

Commissioners - -	District committee.
Burgh - - - -	Special district.
Footpavement - - -	Footway.
This Act - - - -	The adopted section or sections of the Burgh Police (Scotland) Act, 1892.
Inspector of cleansing -	Sanitary inspector.
Magistrate - - -	Sheriff or any two justices of the peace.
Burgh general assessment -	Assessment levied in terms of section forty-four of the Local Government (Scotland) Act, 1894.
By special order as herein defined - - - -	With consent of the county council.

1. See secs. 44 (1) and (4) of the 1894 Act.

2. The Board require that notice be given of the intention to apply for their consent to bye-laws in terms of this Schedule, and that a copy of the bye-laws be open to inspection in the manner prescribed by sec. 185 of the Public Health (Scotland) Act, 1897. That is to say, notice of intention to apply for consent must be given in one or more of the local newspapers circulated within, or by handbills posted throughout, the district to which such bye-laws relate, one month at least before the making of such application, and for one month at least before any such application is considered a copy of the proposed bye-laws must be kept at the office of the local authority, and at the office of the Parish Council of every parish to which such bye-laws relate, and must be open during office hours thereat to the inspection of the ratepayers of the district to which such bye-laws relate, without fee or reward.

3. Sec. 94 of the Local Government (Scotland) Act, 1889, provides—

"94. Any offence against the provisions of this Act or of any bye-law made thereunder may be prosecuted, and any fine or penalty, together with the expenses of process, may be recovered, at the instance of the procurator-fiscal of Court or of the county clerk, before the Sheriff or any two justices of the peace under the provisions of the Summary Jurisdiction Acts.

"Every prosecution shall be begun within six months after the offence was committed or the fine or penalty incurred.

"Every fine or penalty shall be paid into the county fund and applied as the County Council shall determine.

Sched. IV. Sec. 44.

"Every person found liable in any fine or penalty recoverable summarily under this Act shall, failing payment thereof, with expenses, immediately or within a specified time, as the case may be, be liable to be imprisoned in terms of sub-sec. (*b*) of sec. 6 of the Summary Jurisdiction (Scotland) Act, 1881."

APPENDICES.

APPENDIX I.

TOWN COUNCILS (SCOTLAND) ACT, 1900.
[63 & 64 Vict. Ch. 49.]

Elections.

Polling districts.

22.[1] The town council may by resolution divide the burgh, or any ward, into two or more polling districts, and from time to time rescind such resolution or alter the number or boundaries of such polling districts, and in carrying out any election the returning officer shall appoint at least one polling place in each polling district.

1. See note 1 to sec. 10 (3) of the Local Government (Scotland) Act, 1894.

Mode of election and voting.

41.[1] Where a burgh is not divided into wards, there shall be one election of councillors for the whole burgh. In other cases there shall be an election in each ward. In any case where the name of an elector appears in the municipal register as being qualified in respect of premises in more than one ward, such elector may vote in any one of the said wards, but he shall not thereafter be entitled to vote at the same election in any other ward, and in the event of his doing so, or presenting himself at any polling place and asking for and receiving a ballot paper with the intention of so voting, he shall be liable to a penalty not exceeding fifty pounds, recoverable in like manner and under the same alternative as are applicable to any penalty under the Elections (Scotland) (Corrupt and Illegal Practices) Act, 1890.[2] 53 & 54 Vict. c. 55.

1. The procedure in Parish Council elections is similar to that laid down for Town Council elections by this section. See note 1 to sec. 10 (2) of the Local Government (Scotland) Act, 1894.

2. This provision takes the place of sec. 8 of the Municipal Elections Amendment (Scotland) Act, 1868, now repealed. That section provided for an elector being required to make a declaration that he was the person described in the register, and that he had not already voted. Such declarations are no longer necessary.

Notice of vacancies and dates of nomination and election.

42.[1] On any day during the period between and including the eleventh and eighteenth days of October in each year the town-clerk[2] shall, by notice[3] to be affixed to the outside wall of the town hall, or of any premises where the meetings of the town council are ordinarily held, and also to be published either by handbills posted up throughout the burgh or by insertion at least once during the said period in some newspaper or newspapers published within the burgh, if any be, or otherwise in some newspaper or newspapers circulating in the burgh, intimate (1) the names of the councillors falling to retire on the ensuing first Tuesday of November; (2) the wards by which their places fall to be supplied in the case of a burgh divided into wards; (3) the date and place for lodging and withdrawing nomination papers; (4) the date of election in the event of there being a poll; and (5) the polling places. The said notice[2] shall be in, or as nearly as may be in, the forms respectively applicable contained in Schedule III. annexed to this Act.

1. The substitution of the words "parish council" for "town council" and "parish" for "burgh" is practically all the adaptation necessary to suit the section to the circumstances of the Parish Council elections within burghs and police burghs.
2. See note 1 to sec. 17 (1) of the Local Government (Scotland) Act, 1894.
3. There are alternative methods of publication of the notice of election, and while either would conform to the provisions of the section, there could be no objection, it is thought, to the employment of each method if it were considered advisable. For form of notice of Parish Council election see pp. 205-207.

Nomination of candidates.

43. It shall not be competent to elect any person to the office of councillor unless the name of such person shall have been intimated to the town-clerk, in the manner herein-after provided, before four of the clock afternoon of the Tuesday immediately preceding the first Tuesday of November by delivery to him, or at his office, of a nomination paper in, or as nearly as may be in, the form of Schedule IV. hereunto annexed.[1]

1. In Parish Council elections, Schedule II. of the Local Government (Scotland) Act, 1894, will be followed. See form on p. 195.

Signatures to nomination paper.

44.[1] The said nomination paper shall be subscribed by two electors, and the form of assent appended thereto shall be signed by at least five other electors, and in the case of a burgh divided into wards the proposers and assenters shall all be electors of the ward to which the nomination paper applies. The form of consent to be nominated on the nomination paper shall be subscribed by the candidate or a law agent duly authorised by him.[2]

1. This section is not applicable to Parish Council elections. See note 1 to sec. 17 (3) of the Local Government (Scotland) Act, 1894.

2. See note 3 to sec. 16 (1) of the Local Government (Scotland) Act, 1894. In Parish Council elections the person authorised need not be a law agent.

Withdrawal of nomination.

45.[1] Any nomination may be withdrawn by notice of withdrawal given to the town-clerk before four of the clock afternoon of the Thursday immediately preceding the said first Tuesday of November, and such notice of withdrawal shall be signed by the person nominated or a law agent duly authorised by him, and by his two proposers, and shall be in, or as nearly as may be in, the form of Schedule V. of this Act, provided that no such withdrawal shall be competent where its effect would be to reduce the total number of persons nominated for the then ensuing annual election of town councillors in such burgh (or in a ward thereof where the burgh is divided into wards, and the notice applies to such ward) below the number necessary to supply the vacancies to be filled up in the burgh or ward, as the case may be, at that election.

1. The notes to the preceding section apply to this section. See sec. 16 (3) and Schedule III. of the Local Government (Scotland) Act, 1894.

Notice of candidates nominated.

46. The town-clerk shall, not later than the Friday immediately preceding the election, cause public notice to be given of the names of all persons so intimated to him, and not withdrawn as aforesaid, and such notice shall be in, or as nearly as may be in, the form of Schedule VI. hereunto annexed,[1] and shall be affixed and published in manner directed by section forty-two hereof.[2] In case the number of nominations in any burgh or ward does not exceed the number of vacancies, the town-clerk shall, in his notice,

intimate that fact, and state that there will be no poll in such burgh or ward.

1. See form for Parish Council elections on p. 214.
2. See notes to that section.

47. . . . . . .

This section is repealed by sec. 5 of the Town Councils (Scotland) Act, 1903, which provides as follows:—

Sec. 5.—Acceptance and rejection of nomination papers. Section forty-seven of the principal Act is hereby repealed, and in place thereof the following enactment shall be substituted:—

If the names of the person nominated by any nomination paper, and his proposers and assenters, appear in the municipal register of a burgh without any disqualifying mark (the proposers and assenters, if the burgh is divided into wards, so appearing in respect of premises in the ward to which the nomination applies), and if the nomination paper is in or as nearly as may be in the form and contains the particulars prescribed by Schedule Four of the principal Act, the town-clerk shall receive the nomination paper and deal with it as valid, but, otherwise, he shall reject the nomination paper, and the same shall be null and void.

In its application to Parish Council elections, the section may be read thus—

"If the names of the person nominated by any nomination paper, and his proposers, appear in the Parish Council register without any disqualifying mark, and if the nomination paper is in or as nearly as may be in the form and contains the particulars prescribed by Schedule II. of the Local Government (Scotland) Act, 1894, the Returning Officer shall receive the nomination paper and deal with it as valid, but, otherwise, he shall reject the nomination paper, and the same shall be null and void."

Number of candidates not exceeding vacancies.

48. In the event of the number of persons nominated and not subsequently withdrawn not exceeding the number of vacancies in any burgh or ward of a burgh the persons nominated shall be held to be duly elected as councillors.

Poll in contested elections.

49. In the event of the number of persons nominated and not subsequently withdrawn for election as councillors of any burgh or ward of a burgh exceeding the number of vacancies, the election shall be carried out by poll which shall be taken on the first Tuesday of November,[1] under and in conformity with the provisions of the Ballot Act, 1872, the Elections Hours of Poll Act, 1884, and any Acts extending and amending the same.[2]

35 & 36 Vict. c. 33.
47 & 48 Vict. c. 34.

1. See note 3 to sec. 15 (1) of the Local Government (Scotland) Act, 1894, as to date of election in fishing burghs.

2. See note 1 to sec. 10 (3) of the Local Government (Scotland) Act, 1894.

50. The returning officer at the said election shall be the provost[1] of the burgh, but the acting chief magistrate shall act as returning officer in the event— Returning officer.

(1) of the office of provost being at the time vacant;
(2) of the provost being among the number of councillors falling to retire at the election, or of his term as provost expiring, or his resigning office as at the date of the election;
(3) of the provost being incapacitated from acting by illness, absence, or any other cause; or
(4) of the provost declining or failing to perform his duties.

1. If a candidate for the Parish Council, he cannot act as Returning Officer. The proper course is for the duties of that office to be performed by the acting chief magistrate or, as provided for by the following section, the town clerk, or some person appointed by him.

51. In the event of the provost and all the bailies being amongst the number to retire, or being prevented from acting or failing to act as returning officer for any of the reasons aforesaid, the town clerk,[1] or any person appointed by him, shall act as returning officer. Town clerk to be returning officer in certain cases.

1. A deputy, if appointed, has all the powers of a town clerk. (Sec. 80.)

52.[1] The returning officer shall cause the result of the election, whether contested or uncontested, to be declared within the town hall, council chambers, or other public hall or place in the burgh, not later than four of the clock afternoon of the day after the election, and shall cause a written or printed statement thereof, signed by him, to be immediately thereafter affixed to the outside wall of the town hall, or of any premises in which the meetings of the town council are usually held. Declaration of election.

1. See sec. 17 (2) of the Local Government (Scotland) Act, 1894.

53. The town clerk shall, immediately after the declaration of the election, and at latest before the expiry of the day after the election, give notice in writing to the several persons elected of their election, and require them severally to appear in the town hall, council chambers, or other public room aforesaid, on the second lawful day after such election, Notice to councillors of their election.

and at such hour between ten o'clock forenoon and eight o'clock afternoon as may be fixed by said notice, when they shall severally declare, in presence of the returning officer or of the town clerk, whether they accept or decline to accept the office of councillor,[1] and if any such person shall be found to have been elected by more than one ward in a burgh, he shall thereupon declare for which ward he intends to serve. In the event of any person elected failing to attend such meeting and declare his acceptance of office, or to intimate his acceptance of office in writing subscribed by himself or a law agent duly authorised by him, addressed to the town clerk and delivered to him or at his office before the hour of such meeting, the person so elected shall be held to have declined office, and his place shall be held to be vacant.

1. See note 1 to sec. 17 (2) of the Local Government (Scotland), 1894. This section does not apply to the election of parish councillors.

Returning officer to have casting vote.

54. In the event of two or more candidates who cannot all be elected receiving an equal number of votes, the returning officer shall have and exercise a casting vote.[1]

1. See sec. 18 of the Local Government (Scotland) Act, 1894, and note 1 to sec. 10 (3) of that Act.

Application to county and parish council elections.
52 & 53 Vict. c. 50.
57 & 58 Vict. c. 58.

55. This Act shall be deemed to be an enactment regulating the election of town councillors referred to in the Local Government (Scotland) Act, 1889, and the Local Government (Scotland) Act, 1894, and to be an enactment by the said Acts applied to the elections referred to in section sixteen of the last cited Act: Provided that a county council, or the returning officer at an election of county councillors, may refer to the Secretary for Scotland[1] any question that may arise in consequence of the passing of this Act in regard to the procedure at such an election, and the determination of the Secretary for Scotland as signified by order thereon shall be final.

1. Compare secs. 14 (7) and 15 (7) of the Local Government (Scotland) Act, 1894.

FORMS SUGGESTED BY THE LOCAL GOVERNMENT BOARD FOR SCOTLAND FOR USE AT THE ELECTION OF PARISH COUNCILLORS.

Notice of Election.

(*A*) Form for Use in a Burgh or Police Burgh in which there are no Parish Wards. The words within Brackets [ ] may be omitted in the case of a Parish which is wholly Burghal.

Note.—This Form may be adapted to suit the case of a Burgh or Police Burgh comprising parts of two or more Parishes.

Burgh, *or* Police Burgh, of[1]

Election of Parish Councillors, 191—.

Parish of[2]

Notice of Election.

In terms of "The Local Government (Scotland) Act, 1894," and relative Statutes, Notice is Hereby Given—

1. That an election of Parish Councillors for [that part of] the Parish of[2] [which is within the Burgh, *or* Police Burgh, of[1]] will, in the event of there being a poll, take place on Tuesday, the day of November next, between the hours of eight o'clock forenoon and eight o'clock afternoon, at the places following, viz.:—

(Here specify the polling place or places.)

to elect[3] Parish Councillors.

2. That no person can be elected to the office of Parish Councillor whose name is not intimated to me before four o'clock afternoon of Tuesday, the day of October current; that all withdrawals of persons nominated must be intimated to me before four o'clock afternoon of Thursday, the day of October current; and that all intimations must be delivered at my office situated at (here specify address of office).

3. That every person proposed for election as a Parish Councillor must be a Parish Elector within the Parish, and must be nominated by a separate nomination paper in the terms of Schedule

II. of the Local Government (Scotland) Act, 1894, and every such nomination paper must be signed by two parish electors entitled to vote for the candidate nominated, also by the candidate, or by some person duly authorised by him in that behalf.

4. That in the event of the number of persons so nominated, and not subsequently withdrawn, not exceeding the number of vacancies, there will be no poll, and the persons so nominated will be declared duly elected as parish councillors.

5. That copies of the Parish Council Register and forms of nomination and withdrawal papers may be had at my office above mentioned, on or after the 21st October current.

Town Clerk.

(*Date*).

[1] Insert name of Burgh, *or* Police Burgh.
[2] Insert name of Parish.
[3] Insert number of Councillors in words.

(*B*) Form for Use in a Burgh or Police Burgh where there are Parish Wards. The words within Brackets [ ] may be omitted in the case of a Parish which is wholly Burghal.

Note.—This Form may be adapted to suit the case of a Burgh or Police Burgh comprising parts of two or more Parishes.

Burgh, *or* Police Burgh, of[1]

NOTICE OF ELECTION

ELECTION OF PARISH COUNCILLORS, 191—.

Parish of[2] .

In terms of "The Local Government (Scotland) Act, 1894," and relative Statutes, Notice is Hereby Given—

1. That an election of Parish Councillors for [that part of] the Parish of[2] [which is within the Burgh, *or* Police Burgh, of[1]] will, in the event of there being a poll, take place on Tuesday, the day of November next, between the hours of eight o'clock forenoon and eight o'clock afternoon, at the places after mentioned.

FIRST WARD.

Polling place	(here specify polling place or places).
To elect[3]	Parish Councillors.

SECOND WARD.

(As above, and so on through the whole number of wards.)

2. That no person can be elected to the Office of Parish Councillor whose name is not intimated to me before four o'clock afternoon

of Tuesday, the day of October current; that all withdrawals of persons nominated must be intimated to me before four o'clock afternoon of Thursday, the day of October current; and that all intimations must be delivered at my office situated at (here specify address of office).

3. That every person proposed for election as a Parish Councillor must be a Parish Elector within the Parish, and must be nominated by a separate nomination paper in the terms of Schedule II. of the Local Government (Scotland) Act, 1894, and every such nomination paper must be signed by two parish electors entitled to vote for the candidate nominated, also by the candidate, or by some person duly authorised by him in that behalf.

4. That, in the event of the number of persons so nominated, and not subsequently withdrawn, not exceeding the number of vacancies, there will be no poll, and the persons so nominated will be declared duly elected as Parish Councillors.

5. That copies of the Parish Council Register and forms of nomination and withdrawal papers may be had at my office above mentioned, on or after the 21st October current.

Town Clerk.

(*Date*).

[1] Insert name of Burgh, *or* Police Burgh.
[2] Insert name of Parish.
[3] Insert number of Councillors in words.

(*C*) Form for Use in a Landward Parish, or the Landward part of a Parish (excluding Police Burghs), not divided into Wards. The words within Brackets [ ] to be inserted in those cases where the Parish is partly within Burgh or Police Burgh.

NOTICE OF ELECTION.

Parish of[1]

[*or* Landward part of Parish of[1]]

ELECTION OF PARISH COUNCILLORS.

In terms of "The Local Government (Scotland) Act, 1894," and relative Statutes, Notice is Hereby Given—

1. That an election of Parish Councillors for [the Landward part of] the Parish of[1] will, in the event of there being a poll, take place on Tuesday, the day of December, , between the hours of 8 o'clock a.m. and 8 o'clock p.m., at the places following, viz.:—

(Here specify the polling place or places.)

to elect[2] Parish Councillors.

2. That no person can be elected to the office of Parish Councillor who is not nominated before four o'clock afternoon of Tuesday, the day of November current; that all withdrawals of persons nominated must be intimated before four o'clock afternoon of Tuesday, the day of November current, and that all intimations must be delivered at (here specify address).

3. That every person proposed for election as a Parish Councillor must be a Parish Elector within the Parish, and must be nominated by a separate nomination paper in the terms of Schedule II. of the Local Government (Scotland) Act, 1894, and every such nomination paper must be signed by two parish electors entitled to vote for the candidate nominated, also by the candidate, or by some person duly authorised by him in that behalf.

4. That in the event of the number of persons so nominated, and not subsequently withdrawn, not exceeding the number of vacancies, there will be no poll, and the persons so nominated will be declared duly elected as Parish Councillors.

5. That copies of the Parish Council Register and Forms of Nomination and Withdrawal Papers may be had from .

Returning Officer.

(Place and Date.)

[1] Insert name of Parish.
[2] Insert number of Councillors in words.

(*D*) Form for Use in a Landward Parish or the Landward part of a Parish (excluding Police Burghs), divided into Wards. The words within Brackets [ ] to be inserted where the Parish is partly within Burgh or Police Burgh.

NOTICE OF ELECTION.

Parish of[1]

[*or* Landward part of Parish of[1]]

ELECTION OF PARISH COUNCILLORS.

In terms of "The Local Government (Scotland) Act, 1894," and relative Statutes, Notice is Hereby Given—

1. That an election of Parish Councillors for [the Landward part of] the Parish of[1] will, in the event of there being a poll, take place on Tuesday, the day of December, , between the hours of 8 o'clock a.m. and 8 o'clock p.m., at the places after mentioned.

First Ward.

Polling place, (here specify polling place or places).
To elect[2] Parish Councillors.

Second Ward.

(As above, and so on through the whole number of wards.)

2. That no person can be elected to the office of Parish Councillor who is not nominated before four o'clock afternoon of Tuesday, the day of November current; that all withdrawals of persons nominated must be intimated before four o'clock afternoon of Tuesday, the day of November current, and that all intimations must be delivered at (here specify address).

3. That every person proposed for election as a Parish Councillor must be a Parish Elector within the Parish, and must be nominated by a separate nomination paper in the terms of Schedule II. of the Local Government (Scotland) Act, 1894, and every such nomination paper must be signed by two parish electors entitled to vote for the candidate nominated, also by the candidate, or by some person duly authorised by him in that behalf.

4. That in the event of the number of persons so nominated, and not subsequently withdrawn, not exceeding the number of vacancies, there will be no poll, and the persons so nominated will be declared duly elected as Parish Councillors.

5. That copies of the Parish Council Register and Forms of Nomination and Withdrawal Papers may be had from

Returning Officer.

(Place and Date.)

[1] Insert name of Parish.
[2] Insert number of Councillors in words.

(*E*) In some cases expense would be saved by using the following Form of Notice applicable to all the Landward Parishes in the County (exclusive of Police Burghs).

Notice of Election.

County of

Election of Parish Councillors.

In terms of "The Local Government (Scotland) Act, 1894," and relative Statutes, Notice is Hereby Given—

1. That an Election of Parish Councillors will, in the event of there being a poll, take place on Tuesday, the day of

December, , between the hours of 8 o'clock a.m. and 8 o'clock p.m. The following is a list of the Parishes and Parish Wards in the County, exclusive of Burghs and Police Burghs, together with the number of Councillors to be elected for each Parish or Ward, the several polling places, and the names and addresses of the persons to whom Nomination Papers and Notices of Withdrawal are to be delivered, and from whom the requisite Forms may be obtained:—

Parishes and Parish Wards.	Number of Councillors for each Parish or Ward.	Polling-place for each Parish or Ward.	Persons to whom Nomination Papers and Notices of Withdrawal must be delivered, and from whom the requisite Forms may be obtained.

2. That no person can be elected to the office of Parish Councillor who is not nominated before four o'clock afternoon of Tuesday, the day of November current; that all withdrawals of persons nominated must be intimated before four o'clock afternoon of Tuesday, the day of November current, and that all intimations must be delivered at (here specify address).

3. That every person proposed for election as a Parish Councillor must be a Parish Elector within the Parish, and must be nominated by a separate nomination paper in the terms of Schedule II. of the Local Government (Scotland) Act, 1894, and every such nomination paper must be signed by two parish electors entitled to vote for the candidate nominated, also by the candidate, or by some person duly authorised by him in that behalf.

4. That in the event of the number of persons so nominated, and not subsequently withdrawn, not exceeding the number of vacancies, there will be no poll, and the persons so nominated will be declared duly elected as Parish Councillors.

5. Copies of the Parish Council Register and Forms of Nomination Papers and Notices of Withdrawal for each Parish or Ward may be obtained by Electors from the persons mentioned in the fourth column of the foregoing table, with whom, when filled up, the Nomination Papers and Notices of Withdrawal are to be lodged.

Returning Officer.

(Place and Date.)

(*F*) In those cases where the Board have, by Order under Sec. 23 (2) (*b*) of the Local Government (Scotland) Act, 1894, provided for the Election of Additional Members of a Landward Committee, the Notice of Election may be in the following Form. When the Landward part of the Parish is divided into Wards the Form must be adapted thereto, in the manner indicated in Form D *supra*.

NOTICE OF ELECTION.

Parish of[1]

ELECTION OF LANDWARD COMMITTEE.

In terms of "The Local Government (Scotland) Act, 1894," and relative Statutes, Notice is Hereby Given—

1. That an Election of a Landward Committee for the Parish of[1] will, in the event of there being a poll, take place on Tuesday, the day of December, , between the hours of 8 o'clock a.m. and 8 o'clock p.m., at the places following, viz. :—

(Here specify the polling place or places)

to elect[2] members of Landward Committee. The number of Parish Councillors to be elected by the Landward Committee from their own number is[3]

2. That no person can be elected to the office of member of a Landward Committee who is not nominated before four o'clock afternoon of Tuesday, the day of November current; that all withdrawals of persons nominated must be intimated before four o'clock afternoon of Tuesday, the day of November current, and that all intimations must be delivered at (here specify address).

3. That every person proposed for election as a member of the Landward Committee must be a Parish Elector within the Parish, and must be nominated by a separate nomination paper in the terms of Schedule II. of the Local Government (Scotland) Act, 1894, and every such nomination paper must be signed by two parish electors entitled to vote for the candidate nominated, also by the candidate, or by some person duly authorised by him in that behalf.

4. That in the event of the number of persons so nominated, and not subsequently withdrawn, not exceeding the number of vacancies, there will be no poll, and the persons so nominated will be declared duly elected as members of the Landward Committee.

5. That copies of the Parish Council Register and Forms of Nomination and Withdrawal Papers may be had from

Returning Officer.

(Place and Date.)

[1] Insert name of Parish.
[2] Insert number of Landward Committee in words.
[3] Insert number of Councillors in words.

NOMINATION PAPER.

(*A*) See Statutory Form given in Schedule II. of the Local Government (Scotland) Act, 1894, p. 195.

(*B*) Form for use in those cases where the Board have, by Order under Sec. 23 (2) (*b*) of the Local Government (Scotland) Act, 1894, provided for the Election of Additional Members of a Landward Committee.

LOCAL GOVERNMENT (SCOTLAND) ACT, 1894.

ELECTION OF LANDWARD COMMITTEE.

NOMINATION PAPER.

Landward part of the Parish of[1]

We[2]

and[2]

hereby propose and nominate[2]

for election as a Member of the Landward Committee[3]

at the next ensuing Parish Council Election in the Landward part of the Parish of[1]

Given under our hand this[4] day of November, One thousand nine hundred and

, *Candidate*

or by

, *a person duly authorised.*

To

*Returning Officer.**

* If a delegate is appointed his name and address should be inserted here.

---

[1] Specify Parish.

[2] Here insert Name and Place of Abode as in the Parish Council Register for the Parish.

[3] When the Landward part of the Parish is divided into Wards, add here "*for the* ——— *Ward*," specifying such Ward.

[4] Insert Date.

NOTICE OF WITHDRAWAL.

(*A*) See Statutory Form given in Schedule III. of the Local Government (Scotland) Act, 1894, p. 195.

(*B*) Form for use in those cases where the Board have, by Order under Sec. 23 (2) (*b*) of the Local Government (Scotland) Act, 1894, provided for the Election of Additional Members of a Landward Committee.

LOCAL GOVERNMENT (SCOTLAND) ACT, 1894.

ELECTION OF LANDWARD COMMITTEE.

NOTICE OF WITHDRAWAL.

Landward part of the Parish of[1]

The Intimation or Nomination of[2]

for Election as a Member of the Landward Committee[3]

at the next ensuing Parish Council Election in the Landward part of the Parish of[1] is hereby withdrawn.

Given under my hand this[4] day of November, One thousand nine hundred and

, *Candidate.*

or by

, *a person duly authorised.*

To

*Returning Officer.**

* If a delegate is appointed his name and address should be inserted here.

---

[1] Specify Parish.

[2] Here insert Name and Place of Abode of Candidate, as in the Parish Council Register for the Parish.

[3] When the Landward part of the Parish is divided into Wards, add here "*for the ——— Ward,*" specifying such Ward.

[4] Insert Date.

INTIMATION OF NOMINATIONS.

(*A*) Ordinary Form for Burghs and Police Burghs.

Burgh, *or* Police Burgh, of[1]

ELECTION OF PARISH COUNCILLORS.

Parish of[2]

In terms of "The Local Government (Scotland) Act, 1894," and other Statutes thereanent, I Hereby Give Notice that I have received intimation that the following persons are proposed for election as Parish Councillors in [that part of] this parish [which is within the Burgh, *or* Police Burgh, of[1]][3], at the Parish Council Election on Tuesday next.

Ward.*	Name of Candidate.	Place of Abode of Candidate.	Names of Electors Signing Nomination Paper.	Places of Abode of Electors Signing Nomination Paper.
I.				
II.				
III.				

† And I Further Give Notice, in terms of the Statutes aforesaid, that, in respect the number of persons proposed for election as Parish Councillors in the [part of the] Parish[4] [within the said Burgh, *or* Police Burgh], does not exceed the number of Councillors to be elected[5], There will be No Poll,[5] and the persons so proposed will be declared to be elected Parish Councillors of the Parish.

Town Clerk.

[6].....

.....

[1] Specify Burgh, *or* Police Burgh.
[2] Specify Parish.
[3] Insert "and in the Wards thereof," where necessary.
[4] Or, "in the————Ward, *or* Wards," as the case may be.
[5] Insert "in such Ward, *or* Wards," where necessary.
[6] Specify Place and Date.
* This column may be omitted in the case of a Parish not divided into Wards.
† The last clause will only be used when there will be no contest in the Parish, or in one or more Wards thereof.

(*B*) Ordinary Form for Landward Parishes.

Election of Parish Councillors.

Parish of[1]

[or Landward part of the Parish of[1]]

In terms of "The Local Government (Scotland) Act, 1894," and other Statutes thereanent, I Hereby Give Notice that I have received intimation that the following persons are proposed for election as Parish Councillors in [the Landward part of] this Parish at the Parish Council Election on Tuesday, December, .

Ward.*	Name of Candidate.	Place of Abode of Candidate.	Names of Electors Signing Nomination Paper.	Places of Abode of Electors Signing Nomination Paper.
I.				
II.				
III.				

† And I Further Give Notice, in terms of the Statutes aforesaid, that, in respect the number of persons proposed for election as Parish Councillors in the [Landward part of the] Parish does not exceed the number of Councillors to be elected in the [Landward part of the] Parish, There will be No Poll, and the persons so proposed will be declared to be elected Parish Councillors of the Parish.

Returning Officer.

2.....

.....

[1] Specify Parish.
[2] Specify Place and Date.
* This column may be omitted in the case of a Parish not divided into Wards.
† The last clause will only be used when there will be no contest in the Parish, or in one or more Wards thereof.

(*C*) Form for use in those cases where the Board have, by Order under Sec. 23 (2) (*b*) of the Local Government (Scotland) Act, 1894, provided for the election of Additional Members of a Landward Committee.

ELECTION OF LANDWARD COMMITTEE.

Parish of[1]

In terms of "The Local Government (Scotland) Act, 1894," and other Statutes thereanent, I Hereby Give Notice that I have received intimation that the following persons are proposed for election as Members of the Landward Committee in this Parish at the Parish Council Election on Tuesday, December, .

Ward.*	Name of Candidate.	Place of Abode of Candidate.	Names of Electors Signing Nomination Paper.	Places of Abode of Electors Signing Nomination Paper.
I.				
II.				
III.				

† And I Further Give Notice, in terms of the Statutes aforesaid, that in respect the number of persons proposed for election as Members of the Landward Committee in the Parish does not exceed the number to be elected, There will be No Poll, and the persons so proposed will be declared to be elected Members of the Landward Committee of the Parish.

Returning Officer.

2.....

.....

---

[1] Specify Parish.
[2] Specify Place and Date.
* This column may be omitted in the case of a Parish not divided into Wards.
† The last clause will only be used when there will be no contest in the Landward part of the Parish, or in one or more Wards thereof.

SCALE OF FEES RECOMMENDED BY THE LOCAL GOVERNMENT BOARD.

Elections—Scale of Fees.

This scale has been issued by the Local Government Board for Scotland as a guide for Town and Parish Councils in fixing the remuneration to be paid to the Town clerk in respect of his services in connection with the election of Parish Councillors.

Uncontested Elections.

Burghs *not* divided into Wards—

A fee not exceeding £1 11s. 6d. where the number of electors does not exceed 500, and an additional fee of 10s. 6d. for each additional 500 electors or fraction thereof, the maximum fee not to exceed £3 3s.

Burghs divided into Wards—

(*a*) For the First Ward—

A fee not exceeding £1 11s. 6d. where the number of electors in the Burgh does not exceed 500, and an additional fee of 10s. 6d. for each additional 500 electors or fraction thereof, the maximum fee not to exceed £3 3s.

(*b*) For each additional Ward—

A fee of 10s. 6d.

Contested Elections.

Burghs *not* divided into Wards—

(*a*) Contest for the Parish Council alone—

A fee not exceeding £5 5s. where the number of electors does not exceed 500, with an additional fee of 7s. for each additional 500 electors or fraction thereof, the maximum fee not to exceed £6 6s.

(*b*) Contest for both Town and Parish Councils—

A fee not exceeding £4 14s. 6d. where the number of electors does not exceed 500, with an additional fee of 7s. for each additional 500 electors or fraction thereof, the maximum fee not to exceed £5 15s. 6d.

Burghs divided into Wards—

(*a*) Contest for the Parish Council alone—

A fee not exceeding £5 5s. for the first Ward so contested where the number of electors in the Burgh does not exceed 500, and an additional fee of 7s. for each additional 500 electors or fraction thereof, the maximum fee not to exceed £6 6s.

And for each additional Ward contested—

A fee not exceeding £2 2s.

And for each uncontested Ward—

A fee not exceeding 10s. 6d.

(*b*) Contests for both Town and Parish Councils—

A fee not exceeding £4 14s. 6d. for the first Ward so contested where the total number of electors in the Burgh does not exceed 500, and an additional fee of 7s. for each additional 500 electors or fraction thereof, the maximum fee not to exceed £5 15s. 6d.

And for each additional Ward—

(1) If contested for the Parish Council alone, a fee not exceeding £2 12s. 6d.
(2) If contested for both Town and Parish Councils, a fee not exceeding £2 2s.
(3) If uncontested, a fee not exceeding 10s. 6d.

Local Government Board,
Edinburgh, 31st October, 1910.

CIRCULAR AS TO RETURN OF ELECTION EXPENSES.

The following Circular has been issued by the Local Government Board for Scotland as to the Return of Election Expenses required by Section 25 (3) of the Elections (Scotland) (Corrupt and Illegal Practices) Act, 1890.

Local Government Board for Scotland,
Edinburgh, 8th November, 1910.

Sir,

ELECTION OF PARISH COUNCILLORS.

The Board desire to point out that the Return of Expenses and relative Declaration required by Section 25 (3) of the Elections (Scotland) (Corrupt and Illegal Practices) Act, 1890—53 & 54 Vict. c. 55—will have to be made by every Candidate at a Parish Council Election.

The Statutory Form of Declaration, which will be found in the second Schedule of the Act, will require to be slightly altered in cases where no expenses have been incurred. A suitable Form for such cases is given on the next page.

The Declaration must be made before a Justice of the Peace. In Burghs and Police Burghs it is to be sent to the Town Clerk; in Landward areas, to the County Clerk. In every case it is to be

sent to the prescribed Officer within *twenty-eight* days after the day of Election.

I am,

Sir,

Your obedient Servant,

A. MURRAY,
Secretary.

To the County Clerk,
The Town clerk.

FORM OF DECLARATION suggested by the Board for Candidates who have incurred no expenses.

I, , having been a Candidate at the Election of for the of , on the day of do hereby solemnly and sincerely declare that I have not, and, to the best of my knowledge and belief, no person, nor any club, society, or association has, on my behalf, made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said Election.

And I further solemnly and sincerely declare that no money, security, or equivalent for money has, to my knowledge or belief, been paid, advanced, given, or deposited by any one to or in the hands of myself or any other person for the purpose of defraying any expenses incurred on my behalf on account of or in respect of the conduct or management of the said Election.

And I further solemnly and sincerely declare that I will not at any future time make or be a party to the making or giving of any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last mentioned, or provide or be a party to the providing of any money, security, or equivalent for money for the purpose of defraying any such expenses.

(*Signature of Declarant*) C. D.

Signed and declared by the above-named declarant on the day of , before me,

(Signed) E. F.
Justice of the Peace for

APPENDIX II.

SUGGESTIONS BY THE LOCAL GOVERNMENT BOARD FOR SCOTLAND FOR STANDING ORDERS

For Regulation of the Meetings and for the Conduct of Business of Parish Councils.

I. Meetings.

1. The Council shall, in addition to the Meetings provided for by Statute,* hold a Meeting for the transaction of general business on[1] . All Meetings shall be held within the at o'clock.

2. The Inspector[2] may at any time, on the instructions or with the concurrence of the Chairman, or, in cases of urgency, without such concurrence, call a Special Meeting of the Council. He shall call a Special Meeting on receiving a requisition signed by[3] Members of the Council, which requisition shall state the business to be brought up at such Meeting. Should the Inspector[2] fail to call a Meeting within seven days after receiving such requisition, the requisitionists shall be entitled themselves to call a Meeting.

3. All Meetings shall be called by Circular delivered or posted[3] days before the Meeting.† The Circular shall specify the items of business so far as known.

II. Order of Business.

4. The order of business at all Meetings of the Council shall be as follows:—

(1) The Chairman, or in his absence the Vice-Chairman,‡ shall take the Chair; if both are absent, the Members present shall appoint a Chairman of the Meeting. In the event of an equal division of votes, the post of Chairman shall be assigned by lot to one of the Members proposed.

* Under the Local Government Act, 1894, two Meetings take place annually—one in May, 1895, and in December of subsequent years, and another in July. Under the Poor Law Act, 1845, section 30, two Meetings must be held annually on the first Tuesdays of February and August, or at such other stated times as may be approved of by the Board. The Meetings required by the Poor Law Act may be altered to any suitable days; and the Local Government Board recommend the months of May and November, immediately after the terms of Whitsunday and Martinmas, as the dates most convenient for these Meetings.

† For Meetings to fill a casual vacancy in the Council, or a vacancy in the office of Chairman, seven days' notice is necessary. *See* section 19 (2) of the Local Government (Scotland) Act, 1894.

‡ Where no Vice-Chairman has been appointed, this rule will be altered accordingly.

(2) The Inspector[2] shall read the Circular and the statutory authority, if any, for the Meeting.
(3) The sederunt shall be taken.
(4) The Minutes of last Meeting shall be read,* and, when confirmed, signed by the Chairman.
(5) Business required by Statute to be done at the Meeting.
(6) Special business brought forward by direction of the Chairman.
(7) Business continued from previous Meeting.
(8) Reports of Inspector and of Committees.
(9) Business of which notice has been given.
(10) Any other competent business.
(11) The draft of the Minutes shall be read at the end of the Meeting, and signed by the Chairman before he leaves the Chair.

The Council may at any Meeting vary the above order, so as to give precedence to urgent business.

III. Motions.

5. No motion to rescind any resolution which has been passed within the preceding six months, nor any motion to the same effect as any motion which has been negatived within the preceding six months, shall be in order, unless notice of the same be given in the Circular calling the Meeting.

IV. Order of Debate.

6. Every motion or amendment shall be reduced to writing, and shall be moved and seconded before it is put to the Meeting.

7. A Member shall not speak more than once on any motion or amendment (save in explanation), but the mover of a resolution may reply. After the mover has been called on by the Chairman to reply, no other Member shall speak to the question. The decision of the Chairman on all questions of order, relevancy, and regularity shall be final; and it shall be the duty of the Chairman to stop any discussion which, in his judgment, is irrelevant or outside the work of the Council.

V. Voting.

8. Every question shall be determined by a show of hands, unless three Members demand a division, in which case the names for and against the motion or amendment shall be taken down and entered on the Minutes.

VI. Vacancies.

9. In the event of the death, resignation, or disability of the Inspector of Poor or Medical Officer, the Chairman[4] shall make such temporary arrangements as may be necessary for the performance

* If the Minutes have been printed and circulated to all the Members prior to the Meeting, they may be held as read. The object of reading and confirming the Minutes is to secure that they are a correct record of the proceedings. It is not competent, on a motion for the disapproval of the Minutes, to rescind any resolution of the previous Meeting. *See* Rule 5, *Infra.*

of the duties of the office, and shall forthwith call, or cause to be called, a Meeting of the Council, to decide what action is to be taken.

10. Where there are more than two candidates for any office, and the first voting does not show an absolute majority of the Councillors present and voting in favour of any candidate, the candidate having the least number of votes shall be struck off the list, and a fresh voting shall take place; and so on, till an absolute majority shall be obtained in favour of one candidate.

11. Personal canvassing of Members of the Council is prohibited, and the Council may declare any candidate infringing this rule to be disqualified for election.

VII. Signing of Deeds.

12. All Deeds, Contracts, and Writs of importance granted or entered into by the Parish Council shall be in name of the Council, and shall be signed by the Chairman and the Inspector,[2] or by two Councilors and the Inspector.[2]

VIII. Suspension and Alteration of Standing Orders.

13. Any one or more of the Standing Orders, in any case of urgency or upon motion made, may be suspended at any Meeting, so far as regards any business at such Meeting, provided that two-thirds of the Members of the Council present and voting shall so decide.

14. No motion to revoke or alter any Standing Order shall be competent unless notice thereof has been given in the Circular calling the Meeting, and unless such motion is supported by a majority of the whole Council.

Edinburgh, 17th July, 1895.

[1] Specify the day, *e.g.*, the first Tuesday of every month, or the second Friday of the months of..... .....(specify the months), or otherwise.
[2] Or Clerk.
[3] Specify the Number.
[4] Or Relief (or other) Committee.

APPENDIX III.

BURIAL GROUNDS AND CHURCHYARDS: FORMS.

The following forms have been suggested for use by Parish Councils in connection with Burial Grounds and Churchyards:—

I.—Registration of Sale.

Parish of.....

.....Burial Ground.

Registration of Sale.

At this day of One Thousand Nine Hundred and years, the Parish Council of the Parish of on the application of and in consideration of the sum of paid to their Clerk, have Registered the said and h heirs or representatives, as entitled to the exclusive and perpetual right of Burial in Lair No. in Parish Burial Ground, situated at lying in Section on the Plan of said Burial Ground, provided always that the said exclusive right of burial is subject to all the Rules and Regulations made by the said Parish Council, and to any Rules and Regulations which may hereafter be made for the management of the said Burial Ground.

Clerk.

II.—RECEIPT BOOK FOR SALES.

No.

.....191

Receipt to

for

No.

.....191

Paid the Parish Council of

the Sum of £ : : for

This portion should be signed by the party paying for Lair, &c., and may be sent to Auditor as a voucher for Cash received.

No.

PARISH OF .

..... 191

Received by me, Inspector of Poor of the Parish of , on behalf of the Parish Council of the Parish of , from

the Sum of

in payment of

III.—INSTRUCTIONS TO KEEPER OF BURIAL GROUND.

PARISH OF..... .....

.....BURIAL GROUND (OR CHURCHYARD).

Section... . ....., Lair No.....

depth.....feet, for..... .....

....

Aged.....years. Funeral has been fixed to take place

on..... .....the..... .....

instant, at.....o'clock. Spokes are..... .....

needed. M..... ...

is undertaker. Fees are..... .....

PARISH OF..... ..

.....BURIAL GROUND (OR CHURCHYARD).

The Keeper of the Burial Ground will

please make Grave in Section..... ... ..., Lair

No .... , depth.....feet, for.....

....

Aged.....years. Funeral has been fixed to take place

on..... .....the.....

instant, at... .....o'clock. Spokes are.....

needed. M..... .....

is undertaker. Fees are..... ...

....

Clerk.

IV.—REGISTER OF LAIRS (BURIAL GROUNDS).

Parish of..... . ...

....BURIAL GROUND.

REGISTER of Lairs, showing the Sales and Burials in connection with each.

Section.	No. of Lair.	Date of Payment.	Price. £	s.	d.	Date of Burials in this Lair.	Name of Person Interred.	Age.	No. in Register of Burials.
		191 .				191 .			

Date of Purchase.	Name and Designation of Purchaser.
191 .	

Date of Transfer.	Name and Designation of Transferee.
191 .	

V.—REGISTER OF LAIRS (CHURCHYARDS).

PARISH OF..... ....

....CHURCHYARD.

REGISTER of Lairs, showing the Burials in connection with each.

Section..... Lair No.....

Date.	Name and Designation of Person to whom Lair has been allocated.	Date of Burials in this Lair.	NAME OF PERSON INTERRED.	Age.	No. in Register of Burials.
191		191			

VI.—REGISTER OF BURIALS.

PARISH OF..... .....BURIAL GROUND (OR CHURCHYARD).

No.	NAME OF DECEASED.	Designation and Residence; and if Child, Name and Designation of Parent or Guardian.	Age.	Date of Burial.	Section.	No. of Lair.	Depth of Grave.	REMARKS.	Signature of Clerk.
							feet.		

APPENDIX IV.

ADAPTATIONS BY THE LOCAL GOVERNMENT BOARD FOR SCOTLAND IN PURSUANCE OF SEC. 26 OF THE LOCAL GOVERNMENT (SCOTLAND) ACT, 1894, OF THE PROVISIONS OF THE LANDS CLAUSES CONSOLIDATION (SCOTLAND) ACT, 1845.

To THE COUNTY COUNCIL OF THE

And to all others whom it may concern.

Whereas by sub-sections (1) and (7) of Section 26 of the Local Government (Scotland) Act, 1894, it is enacted that—

"26. (1) A Parish Council shall have power to take land on lease for allotments or, not exceeding 20 acres in extent, for common pasture; and if they are satisfied that allotments or common pasture are required, and are unable to obtain on lease by agreement on reasonable terms suitable land for allotments or for common pasture, they shall represent the case to the County Council, and the County Council may, subject to the restrictions in this section, make an Order authorising the Parish Council to take on lease compulsorily for allotments, for a period of not less than ten years nor more than thirty-five years, such land in or near the parish as is specified in the Order; and the Order shall, as respects confirmation and otherwise, be subject to the like provisions as if it were an Order of the County Council made under the last preceding section of this Act, and that section shall apply as if it were herein re-enacted with the substitution of taking on lease for purchase, and with the other necessary modifications."

"(7) The Order for compulsory taking on lease may apply, with any adaptations which may be prescribed by general or special Order of the Board, such of the provisions of the Lands Clauses Acts (including those relating to the acquisition of land otherwise than by agreement) as appear to the County Council or Board sufficient for carrying into effect the Order, and for the protection of the persons interested in the land and of the Parish Council."

Now Therefore, We the Local Government Board for Scotland, in pursuance of the powers given to Us in that behalf, Do hereby prescribe as follows, that is to say—

For the purposes of any Order to be made by the County Council of the under Section twenty-six of the Local Government (Scotland) Act, 1894, for authorising a Parish Council to take

on lease for allotments compulsorily for a period of not less than ten years nor more than thirty-five years such land as is specified in the Order, the provisions of the Lands Clauses Acts shall be adapted so that the provisions of the Lands Clauses Acts which any such Order may apply shall be the provisions of those Acts in the form and with the adaptations contained in the paragraphs numbered one to twenty-one, both inclusive, of the Schedule to this Order, and in the words in the said Schedule set forth by way of introduction to and description of the subject-matter of the said paragraphs.

SCHEDULE.

I.

WITH RESPECT TO THE CONSTRUCTION OF THE ADAPTED PROVISIONS.

1. (II.-III.) The expression "the adapted provisions" means the Lands Clauses Consolidation (Scotland) Act, 1845, as applied, with the prescribed adaptations, in pursuance of Section twenty-six of the Local Government (Scotland) Act, 1894; the expression "the Order," used in the adapted provisions, means any Order made under Sub-section (1) of Section twenty-six of the Local Government (Scotland) Act, 1894, which authorises the taking on lease compulsorily of land by a Parish Council; the expression "the Parish Council" means the Parish Council by the Order empowered to take lands on lease compulsorily; the expression "Lands" has the meaning assigned to the expression "Land" in Section sixteen of the Allotments (Scotland) Act, 1892; the expression "Owner" means the person or persons or corporation who, whether under the Order or the Local Government (Scotland) Act, 1894, or the adapted provisions, or otherwise by reason of his or their estate or interest in the lands, or of the powers of letting on lease exercisable by him or them in respect of the lands comprised in the Order, is or are enabled to let the same on lease to the Parish Council for the term for which the Parish Council are by the Order authorised to take the same on lease compulsorily; the expression "Compensation" means any sum of money payable by the Parish Council in respect of the taking on lease of any lands by the Order authorised to be compulsorily taken on lease, and not being rent or other payment to become due under the lease in respect of the said lands.

Unless the contrary intention appears, all words and expressions used in the adapted provisions, and not hereinbefore specifically defined, shall have the meanings respectively assigned to them by and shall be construed in accordance with the provisions of the Interpretation Act, 1889, and the rules of construction in the Interpretation Act, 1889, contained shall apply to the adapted provisions as if the said provisions were an Act passed after the commencement of the Interpretation Act, 1889.

2. (V.) For the purposes of Section twenty-six of the Local Government (Scotland) Act, 1894, the incorporation with the Order

of the adapted provisions shall be effected by the statement in the Order that the adapted provisions, or such of them as shall appear sufficient, shall be incorporated therewith; and thereupon all such provisions shall form part of the Order, and the Order shall be construed as if such provisions were set forth therein with reference to the matter to which it relates.

II.

With respect to the Taking of Lands on Lease by Agreement.

3. (VI.) Subject to the adapted provisions, it shall be lawful for the Parish Council to agree with the owners of any lands by the Order authorised to be taken on lease compulsorily, for the taking on lease of any such lands, or such parts thereof as they shall think proper.

4. (VII.) It shall be lawful for all parties, being possessed of any lands by the Order authorised to be taken on lease, or of any right or interest therein, to let such lands on lease or (according to their right or interest therein) to join in letting the same on lease to the Parish Council, and to enter into all necessary agreements for these purposes, and particularly it shall be lawful for the parties following so to do; (that is to say,) all corporations, heirs of entail, life-renters or persons holding any other partial or qualified estate or interest, married women seised in their own right or entitled to terce or dower, or any other right or interest, husbands, tutors, curators, and other guardians for infants, minors, lunatics or idiots, fatuous or furious persons, or for persons under any other disability or incapacity, judicial factors, trustees or feoffees in trust for charitable or other purposes, executors, and administrators; and the power so to let on lease as aforesaid may lawfully be exercised by all such parties, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion or expectancy after them, and as to such married women as if they were sole, and as to such tutors, curators, guardians, judicial factors, and trustees, on behalf of those for whom they respectively act, whether infants, minors, issue unborn, bankrupts, lunatics, idiots, fatuous and furious persons, married women, or other incapacitated persons, and that to the same extent as such infants, minors, bankrupts, lunatics, idiots, fatuous and furious persons, married women, and other incapacitated persons respectively could have exercised the same power under the authority of the Order or the Local Government (Scotland) Act, 1894, or the adapted provisions if they had respectively been under no disability, or as if any disability, to which any such parties may be subject, did not extend to the power to lease such lands to the Parish Council for the term mentioned in the Order.

5. (X.) The owner of any lands by the Order authorised to be compulsorily taken on lease, if he is entitled, otherwise than under

the Order or the Local Government (Scotland) Act, 1894, or the adapted provisions, to let the same on lease for the term mentioned in the Order, may agree with the Parish Council as to the terms and conditions of the lease; but if he is not so entitled, the terms and conditions of the lease shall be settled in terms of Section 26 (2) of the Local Government (Scotland) Act, 1894; and unless the owner is entitled to dispose of such lands absolutely for his own benefit, the compensation, if any, to be paid for any permanent damage or injury to such lands shall be settled by arbitration in terms of said Section 26 (2).

III.

WITH RESPECT TO THE TAKING OF LANDS ON LEASE OTHERWISE THAN BY AGREEMENT.

6. (XVII.) When the Parish Council require to take on lease compulsorily any of the lands which by the Order they are authorised to take on lease, they shall give notice thereof to the owner of such lands, and to all the parties interested in such lands, or to the parties enabled by the Order, or the Local Government (Scotland) Act, 1894, or the adapted provisions, to let the same on lease, or such of the said parties as shall, after diligent inquiry, be known to the Parish Council, and by such notice shall demand from such parties the particulars of their interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the Parish Council are willing to treat for taking the same on lease, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the said taking of said lands.

7. (XVIII.) All notices required to be served by the Parish Council upon the owner and the parties interested in or entitled to let on lease any such lands shall either be served personally on such parties, or left at their last usual place of abode, if any such can, after diligent inquiry, be found; and in case any such owner or parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, such notices when the same are to be given to an owner of lands shall be served on the factor or agent, if any, of such owner, and shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

8. (XIX.) If the Parish Council cannot, after diligent inquiry, ascertain the owner of the lands, and the parties interested in the lands, or for twenty-one days after the service of such notice any such party shall fail to state the particulars of his claim in respect of any such lands, or to treat with the Parish Council in respect thereof, or if any such party and the Parish Council shall not agree as to the terms and conditions of the lease, or as to any other matter mentioned in Sub-section two of Section twenty-six of the Local Government (Scotland) Act, 1894, any question arising as to any such matter shall be determined in

the manner provided by Section 26 (2) of the Local Government (Scotland) Act, 1894.

9. (XXIV.) Every appointment of an arbiter shall be made on the part of the Parish Council by an Instrument executed at a meeting of the Parish Council and signed by the Chairman of the meeting and two other members of the Parish Council, and on the part of any other party under the hand of such party, or if such party be a company or corporation, under the hand of the proper officer or person authorised by such company or corporation, and such appointment shall be delivered to the arbiter, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation.

10. (XXXII.) All the expenses of any such arbitration and incident thereto, to be settled by the arbiter, shall be borne by the Parish Council, unless the arbiter shall award the same sum as or a less sum than shall have been offered by the Parish Council, in which case each party shall bear his own expenses incident to the arbitration; and in all cases the expenses of the arbiter, and of recording the decreet-arbitral or award in the books of the Council and Session, shall be borne by the Parish Council.

11. (XXXIII.) The arbiter shall make his decreet-arbitral or award in writing, and if either party so desire, shall cause the same to be recorded in the Books of Council and Session, or shall deliver the same to the Parish Council, to be by them so recorded, and the said Parish Council shall, on demand, at their own expense, furnish an extract thereof from the said books, or a notarially certified copy to the other party to the arbitration; and extracts of decreets-arbitral or awards or such notarially certified copies shall bear faith in all courts and cases the same as the original writings, unless the originals be improven.

12. (XXXIV.) No award made with respect to any question referred to arbitration under the Order or the Local Government (Scotland) Act, 1894, shall be set aside for irregularity or error in matter of form.

IV.

With respect to Compensation to Parties having limited Interests, or prevented from Treating, or not making Title.

13. (LXVII.-LXXIII.) Where, in accordance with an agreement made with the Parish Council in pursuance of the adapted provisions, or in accordance with an award of an arbiter appointed under the provisions of Section twenty-five (10) (*a*) of the Local Government (Scotland) Act, 1894, any compensation becomes payable on the taking on lease by the Parish Council of any lands by the Order authorised to be compulsorily so taken, such compensa-

tion shall (except as hereinafter provided) be paid to the party to whom the same is payable according to such agreement or award within a period of six weeks after the date of the agreement, or after the receipt by the Parish Council of the award of the arbiter, or if by reason of the absence of such party from the United Kingdom, or of failure to find him after diligent inquiry, or from any other just cause, the Parish Council are prevented from paying such compensation to such party, or if such party shall, on such compensation being tendered to him, refuse to receive the same, such compensation shall be deposited as soon as conveniently may be in a Post Office Savings Bank established in any town or other place in which the usual or last known place of abode of such party within the United Kingdom is situate, or in some Bank to be approved by the arbiter, to the account of such party:

Provided that where such compensation shall be payable in respect of breaking up permanent pasture, or in respect of any other permanent damage or injury to the lands to be taken on lease, and such lands are to be taken on lease from any party not seised in fee or entitled to let the lands in terms of the lease thereof arranged in terms of the Local Government (Scotland) Act, 1894, or the Order, such compensation shall be deposited by the Parish Council within a period of six weeks after they shall have received the award of the arbiter in a Bank, as hereinbefore provided, to the credit of the parties interested in such lands (describing them so far as the Parish Council can do) subject to the control and disposition of the Court of Session, and with respect to compensation so deposited the provisions of Sections seventy-two, seventy-seven, seventy-eight, and seventy-nine of the Lands Clauses Consolidation (Scotland) Act, 1845, shall, subject to the provisions of any Act or Order of Court for the time being in force for regulating moneys paid into the Court of Session, apply, as nearly as may be, to such compensation as if it were purchase money or compensation payable in respect of any lands or any interest therein purchased or taken under the said Lands Clauses Consolidation (Scotland) Act, 1845, by the promoters of an undertaking:

Provided also, that, if such compensation payable in respect of breaking up permanent pasture, or in respect of any other permanent damage or injury to the lands to be taken on lease, do not amount to the sum of two hundred pounds and exceed the sum of twenty pounds, the same shall either be deposited in a Bank in the manner hereinbefore directed, and when so deposited shall be subject to the provisions hereinbefore contained, or made applicable to compensation deposited in a Bank, or such compensation may be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands on the taking on lease whereof the same is payable, such nomination to be signified by writing under the hands of the parties so entitled; and in the case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such compensation, such nomination may be made by their respective husbands, guardians, tutors, curators, judicial factors or trustees, and the compensation so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied as nearly as may be in the same manner as if such compensation or produce were money, or the produce arising from money, paid to

such trustees in pursuance of the provisions of Section sixty-nine of the Lands Clauses Consolidation (Scotland) Act, 1845, but it shall not be necessary to obtain any Order of the Court for that purpose:

Provided likewise that if such compensation do not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands, on the letting on lease whereof the same shall be payable, for their own use and benefit, and in the case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to said compensation, the same shall be paid to their respective husbands, guardians, tutors, curators, judicial factors, or trustees for the use and benefit of the parties incapacitated as aforesaid.

14. (LXXIV.) Upon payment or upon deposit in a Post Office Savings Bank, or in a Bank approved by the arbiter (according as the circumstances of the case and the adapted provisions applicable thereto allow or require), of any compensation agreed or awarded to be paid by the Parish Council, the owner of the lands authorised to be compulsorily taken on lease shall, when required so to do by the Parish Council, duly lease such lands to the said Council. When the Parish Council have, in pursuance of the adapted provisions, paid or deposited all compensation agreed or awarded to be paid on the taking on lease of any lands by the Order authorised to be compulsorily taken on lease, if the owner of the lands refuses, or, after notice in writing by the Parish Council, fails within one calendar month to execute a lease of the lands, so framed and containing such provisions and conditions as may have been agreed upon between him and the Parish Council, or, if the terms and conditions of the letting on lease have been settled by arbitration, if the owner of the lands cannot after diligent inquiry be ascertained, or fails within a like period after such notice to execute the lease delivered by the arbiter with the award, the Parish Council shall execute such lease, and shall thereupon be entitled to enter upon the lands and to hold the same under the lease and subject to the provisions and conditions therein contained, and shall be liable to the payment of the rent and be bound by the provisions and conditions of the lease as if it had been duly executed by all parties.

15. (LXXVI.) In every case in which, in pursuance of the adapted provisions, the compensation agreed or awarded to be paid on the taking on lease of any lands by the Order authorised to be compulsorily taken on lease has been deposited in a Post Office Savings Bank, or in a Bank approved by the arbiter, an officer of such Post Office Savings Bank, or a cashier of such Bank approved as aforesaid, shall give to the Parish Council, or to the party depositing such compensation by their direction, a receipt for such compensation. Such receipt shall be prepared by the Parish Council, shall be submitted by the Parish Council, or by the party depositing such compensation by their direction, to such officer or cashier for his signature, and shall specify to whose account such compensation is deposited, and, if the same is deposited in a Bank, to the credit of what parties (describing them so far as the Parish Council can do) and in respect of the taking on lease of what lands the same shall have been deposited.

V.

With respect to Leases of Lands.

16. (LXXX.) Every lease in respect of lands by the Order authorised to be compulsorily taken on lease by the Parish Council, shall be so framed and shall contain such provisions and conditions as will give due effect to such terms and conditions of the lease, and to such other matters as may have been agreed or awarded in relation to such taking on lease, and if the terms and conditions have been settled by arbitration the lease shall be settled by the arbiter, and copies of the same in duplicate, duly stamped, shall be delivered with the award, and shall for the purpose of costs be considered as forming part of the award.

17. (LXXXI.) The expenses of all leases shall be borne by the Parish Council; and such expenses shall include all charges and expenses, incurred on the part as well of the lessor as of the lessee, of leases of any such lands, and of any interests therein, and of establishing the title to such lands, and all other reasonable expenses incident to the investigation of such title.

18. (CXII.) If any lands shall be comprised in a lease or missive of lease for a term of years unexpired, part only of which lands shall be authorised by the Order to be compulsorily taken on lease, the rent payable in respect of the lands comprised in such lease or missive of lease shall be apportioned between the lands so required and the residue of such lands, and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the Parish Council on the other part. Every such Agreement may contain the necessary stipulations and conditions with respect to any matter which in relation to such apportionment may be made the subject of determination by an award of an arbiter appointed under Section three (4) of the Allotments Act, 1892, or Section twenty-six (2) of the Local Government (Scotland) Act, 1894, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by arbitration in terms of Section twenty-six (2) of the Local Government (Scotland) Act, 1894, in which case the lessee shall be one of the parties appointing the arbiter, and if the lessee do not concur with the other parties in such appointment, then the appointment shall be made by the Board in terms of Section twenty-five (10) of the Local Government (Scotland) Act, 1894.

After such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not taken on lease by the Parish Council under the Order; and as to the lands not so taken on lease, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease or missive of lease; and all the obligations, conditions, and agreements of such lease or missive of lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which

shall not be taken by the Parish Council as aforesaid, in the same manner as they would have been in case such part only of the land had been included in the lease or missive of lease.

19. (CXIV.) If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by any incoming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him in his tenancy by the severing of the lands held by him, or otherwise injuriously affecting the same, and the amount of such compensation shall be determined by an arbiter to be appointed as aforesaid, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the Parish Council, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the said Order.

20. (CXV.) If any party, having a greater interest than as tenant for a year or from year to year, claim compensation in respect of any unexpired term or interest under any lease, missive of lease, or grant of any such lands, the Parish Council may require such party to produce the lease, missive of lease, or grant in respect of which such claim shall be made, or other legal evidence thereof in his power; and if, after demand made in writing by the Parish Council, such lease, missive of lease, or grant, or other legal evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

With respect to the Entry upon Lands by the Parish Council.

21. (LXXXIX.) If, in any case in which, according to the adapted provisions or the Order or the Local Government (Scotland) Act, 1894, the Parish Council are authorised to enter upon and take possession of any lands, the owner or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the Parish Council from entering upon or taking possession of the same, it shall be lawful for the Parish Council to apply by petition to the Sheriff for possession of the same, and upon such application the Sheriff may authorise and order possession of any such lands accordingly; and the expenses accruing by reason of such application, to be settled and decerned for by the Sheriff, shall be paid by the person wrongfully refusing to give or hindering possession; and the amount of such expenses shall be deducted and retained by the Parish Council from the compensation, if

any, then payable by them to such party; or if no such compensation be payable to such party, or if the same be less than the amount of such expenses, then such expenses, or the excess thereof beyond such compensation, if not paid on demand, may be levied by poinding and sale, and the Sheriff may issue his warrant accordingly.

Given under the Seal of Office of the Local Government Board for Scotland, this

L.S.

APPENDIX V.

PARISH COUNCILS CASUAL VACANCIES (SCOTLAND) ACT, 1897.

[60 & 61 Vict. Ch. 49.]

An Act to make better provision for filling up Casual Vacancies in Parish Councils in Scotland.

[6th August 1897.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short Title and construction. 57 & 58 Vict. c. 53.

1. This Act may be cited as the Parish Councils Casual Vacancies (Scotland) Act, 1897,[1] and shall be construed as one with the Local Government (Scotland) Act, 1894.

1. This Act does not apply to an increased Landward Committee. See note 7 to sec. 23 (2) of the Local Government Act, 1894.

Provisions for filling up casual vacancies in parish councils in parishes partly landward and partly burghal, &c.

2. In the event of a casual vacancy in the parish council of a parish which is partly landward and partly burghal, or comprises a police burgh or part of a police burgh, the following provisions shall have effect with respect to the filling up of such vacancy (that is to say):—

The parish councillors who are not members of the Landward Committee of such parish council shall not be entitled to vote in filling up any casual vacancy in

such parish council, except a vacancy caused by the death, resignation, or disqualification of a parish councillor who was not a member of such Landward Committee.[1]

1. The effect of this section seems to be that a vacancy in a Landward Committee is filled at a meeting of the Parish Council, at which the burghal members are not entitled to vote. The Chairman of the Parish Council would in ordinary circumstances preside, but, in view of the provisions of this Act, which make it extremely doubtful whether he could give a casting vote in the event of its being necessary (unless, of course, he happened to be also Chairman of the Landward Committee) it would be better for the Chairman of the Landward Committee, or in his absence for one of the landward members to take the chair pending the election of a new member.

It is only necessary that a quorum of the Parish Council should be present, but any motion must be moved and seconded by landward members.

APPENDIX VI.

The following Circulars have been issued by the Local Government Board for Scotland relating to dealings between Parish Councillors and the Councils of which they are members.

QUALIFICATIONS OF PARISH COUNCILLORS.

Local Government Board for Scotland,
Edinburgh, 16th March, 1895.

Sir,

It is of importance that intending candidates for Parish Council Elections should make themselves aware of the legal disqualifications for being elected to or holding the office of Parish Councillor. It is for the candidates themselves to ascertain whether they are legally qualified. The Returning Officer has no duty to decide questions of qualification, other than such as appear *ex facie* of the nomination paper;[1] and, while he may warn any candidate of the risk incurred, no responsibility can attach to him if a disqualified person should be elected, and if an election petition with the consequent expense should follow.

In addition to the general disqualifications, such as bankruptcy, which apply to all elections, there are other special disqualifications, which are enumerated in section 20 of the Local Government (Scotland) Act, 1894, of which the following general summary may be made:—

Among the Disqualifying Offices are—

(*a*) The Inspector of Poor, the Parochial Medical Officer, and all assistants, clerks, and others who are in the service of the Parochial Board, and are paid, directly or indirectly, by them.

(*b*) Paid Officials of Poorhouses, including Governors, Matrons, Chaplains, Medical Officers, Nurses, Porters, Attendants, and servants of all kinds. The paid Officials of a Combination Poorhouse, including the Secretary of the Combination, are disqualified for election in any Parish in the Combination.[2]

(*c*) Registrars, when appointed and paid by the Parochial Board. If appointed and paid by any other authority, they are, if otherwise qualified, eligible. The Registrar-General, however, is of opinion that, looking to the nature of the Registrar's duties, it is undesirable that he should in any case be a candidate; and the Local Government Board concur in this view.

Persons or members of firms holding contracts with the Parochial Board are disqualified, unless they come within the exceptions enumerated in section 20 (2). For instance, a person who rents a house or office to the Parochial Board is not disqualified, for the word "land" in section 20 (2) (*a*) includes houses and buildings; but, if elected, he would come under the provision at the end of section 20 (2), that no Parish Councillor shall vote or act in any matter in which he has a pecuniary interest.

Disqualification will attach to a person *under contract* with a Parochial Board or a Poorhouse Committee[2] to supply goods, &c., to the poor or for a Poorhouse; but a contract, in the sense of the Statute, would not be held to exist where the Parochial Board dealt with him only occasionally in the purchase of supplies, say, in a ready money transaction in an emergency, and he would not be disqualified.[3]

As to existing contracts, if any person nominated agrees to forego his rights, and to terminate the bargain (and this is assented to by the Parochial Board), his nomination and election would be competent.

I am, Sir,

Your obedient Servant,

JOHN SKELTON,
Vice-President.

MALCOLM M'NEILL,
Secretary.

To

The County Clerk,
The Town Clerk,
The Clerk to the Burgh Commissioners,
or
The Inspector of Poor.

[1] See note 3 to sec. 10 (1) of the Local Government (Scotland) Act, 1894.

[2] This opinion has been departed from. The Board now take the view that it would not be incompetent for a Parish Councillor of a parish in a Poorhouse Combination to enter into a contract with the House Committee so long as he himself was not a member of that Committee (13th Report, 1907, p. xxxiv.). It seems to follow that the paid officials of a Combination Poorhouse are not by law disqualified for election as Parish Councillors of the parishes in the Combination, although they are, of course, ineligible to serve on the Poorhouse Committee. There has, however, been no authoritative decision on the point.

[3] See, however, the circulars of 2nd January, 1900, and 10th October, 1901, which discourage dealings in any shape or form between Parish Councillors and the Parish Councils of which they are members.

Local Government Board,
Edinburgh, 2nd January, 1900.

Sir,

The attention of the Board has recently been called to a number of cases in which Parish Councillors supply goods to the Parish Council of which they are members, or to paupers belonging to the Parish, or otherwise enter into a contract or employment inferring liability on the Parish Council. The Board desire to point out that this practice is contrary to law.

It involves, in the first place, disqualification for a seat on the Parish Council. It is expressly provided by Section 20 (1) of the Local Government (Scotland) Act, 1894, that—

> "A person shall be disqualified for being elected, and for being, a member of a parish council, if and while he—
>
> (*a*) Holds any office or place of profit under the parish council or any committee thereof, or
>
> (*b*) Has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of, the parish council or any committee thereof."

Sub-section 2 of the same Section specifies certain exceptions to the above rule, and concludes with the words—

> "Provided that no parish councillor shall vote or act in any matter in which he has a pecuniary interest."

It is the duty of the Parish Council to enforce the provisions of the Statute, and to declare vacant the seat of any Councillor who comes under the disqualification.

The practice referred to also involves a breach of the rule of common law relating to Trustees. A Parish Councillor occupies the position of a Trustee, and is not entitled to put himself in such a position that his personal interest and his duty as a Trustee may conflict. Accordingly, if a payment is made by a Parish Council to one of their own number in respect of any contract or employment, the Board will have no alternative but to declare such payment to be illegal in the event of objection being taken to it at the audit.

Parish Councillors should avoid all dealings involving payments to them by the Parish Council or the paupers under their charge. Such payments[1] are illegal, and those who make them become liable to surcharge in respect of them; it is therefore desirable that any person with whom such dealings are likely to be entered into should decline to be nominated for the Parish Council, or, if already a member, should resign his seat.

I am to request you to submit this circular to the first meeting of your Parish Council.

I am, Sir,

Your obedient Servant,

G. Falconar-Stewart,
Secretary.

The Clerk to
The Parish Council.

[1] This must refer only to payments by the Parish Council. There would appear to be no illegality in a pauper making a payment to a parish councillor.

Local Government Board,
Edinburgh, 10th October, 1901.

Sir,

I am directed to call attention to the Board's Circular of 2nd January, 1900, as to the illegality of the practice of Parish Councillors supplying goods to the Parish Council of which they are members.

Notwithstanding the warning then given, the Board have found in a number of cases which have been brought to their notice in connection with the Audit of Parochial Accounts that Parish Councillors continue to supply goods to, or undertake employment on behalf of, the Parish Councils of which they are members.

In justification of the practice it is sometimes urged that the goods so supplied by Parish Councillors cannot be obtained elsewhere save at great inconvenience and at an increased cost. The practice, however, is clearly a breach of the law, which the Board in the exercise of their statutory duty cannot avoid taking notice of. They therefore trust that any one who is likely to have dealings involving payments to him by or on behalf of the Parish Council will refrain from becoming a candidate for election to that body.

The Board have to request you to submit this communication to the Parish Council at their first meeting, and they will be glad if its contents can be brought under the notice of candidates for the Parish Council.

I am, Sir,

Your obedient Servant,

G. Falconar-Stewart,
Secretary.

The Clerk to the Parish Council.

APPENDIX VII.

ALLOTMENTS (SCOTLAND) ACT, 1892.

(Secs. 5 to 8; Proviso to Sec. 12; and Sec. 14.)

Improvement and adaptation of land for allotments.

5. The local authority[1] may improve any land acquired by them under this Act, [2] and adapt the same for letting in allotments, by draining, fencing,[3] and dividing the same, acquiring approaches, making roads, and otherwise, as they think fit, and may from time to time do such things as may be necessary for maintaining such drains, fences, approaches,

and roads, or otherwise for maintaining the allotments in a proper condition. **Sec. 5.**

1. *I.e.*, the Parish Council or Landward Committee.

2. *I.e.*, taken on lease in terms of sec. 26 (1) of the Local Government Act, 1894. A reference to sec. 26 (1) of the 1894 Act must be substituted for the word "Act" throughout the adopted provisions.

3. In reply to an inquiry as to how the expense of fencing was to be met, the Board indicated that the proper course was for the Parish Council in the first instance to levy a rate for the purpose under sec. 27 (1) of the Local Government Act, 1894, and so to adjust the rents in terms of sec. 7 (1) of the Allotments Act as ultimately to recover the cost from the allotment holders (3rd Report, 1896-97, p. xxiv.).

In another case, however, the Board held that where a Clerk's salary had been increased in respect of work connected with allotments, the increase was chargeable to the Special Parish Rate, and not against the allotment holders (14th Report, 1908, p. xxxv.)

6.—(1.) Subject to the provisions of this Act,[1] the local authority may from time to time make, revoke, and vary such regulations as appear to be necessary or proper for regulating the letting of allotments under this Act, and for preventing any undue preference in the letting thereof, and generally for carrying the provisions of this Act into effect; and such regulations may define the persons[2] eligible to be tenants of such allotments, and the notices to be given for the letting thereof, and the size of the allotments, and the conditions under which they are to be cultivated, and the rent to be paid for them. Provided that all such regulations shall make provision for reasonable notice to be given to a tenant of any allotment of the determination of his tenancy. Provided also, that all regulations made under this section shall not be of any force unless and until they have been confirmed by the Secretary for Scotland, after such publication and inquiry, and with such modifications (if any) as the said Secretary shall determine. Management of allotments.

1. See note 2 to sec. 5 *supra*.

2. The duty of defining the persons eligible to be tenants of allotments will, if the allotments are provided under the Allotments Act, rest in the first instance with the County Council. If provided under sec. 26 of the Local Government Act, 1894, the duty will lie with the Parish Council. In each case the regulations must be approved by the Secretary for Scotland. See note 3 to sec. 26 (1) of the Local Government Act, 1894.

Sec. 6

(2.) All regulations for the time being in force under this section shall be binding on all persons whatsoever; and the local authority[1] shall cause them to be from time to time made known, in such manner as the local authority[1] think fit, to all persons interested, and shall cause a copy thereof to be given gratis to any inhabitant of the *burgh or*[2] parish demanding the same.

1. See note 1 to sec. 5 *supra*.

2. The words in italics may be omitted so far as Parish Councils are concerned, as sec. 26 (1) of the Local Government Act does not apply to burghs.

(3.)[1] Subject to the provisions of this Act, the local authority[2] may from time to time appoint, and when appointed remove, allotment managers of land acquired under this Act for allotments, and such allotment managers shall consist either partly of members of such authority and partly of other persons, or wholly of other persons, so that in either case such other persons be persons residing in the locality and contributing to the rate or assessment out of which the expenses under this Act are paid.

1. In landward areas this sub-section is rendered obsolete by sec. 24 (4) of the Local Government Act, 1894.

2. See note 1 to sec. 5 *supra*.

(4.)[1] The proceedings and powers of allotment managers shall be such as, subject to the provisions of this Act, may be prescribed from time to time by the local authority; the allotment managers may be empowered by the local authority to do anything in relation to the management of such allotments which the local authority are authorised to do, and to incur expenses to such amount as the local authority prescribe, and any expenses properly so incurred shall be deemed to be expenses of the local authority under this Act.

Provisions as to letting and use of allotments.

7.—(1.) The rents of the allotments shall be fixed at an amount not less than such as may reasonably be expected to ensure the local authority[1] from loss;[2] but in calculating such loss any expenses incurred in an unsuccessful attempt to acquire land for allotments shall be excluded and,

subject as aforesaid, such rents may be from time to time charged as are reasonable, having regard to the agricultural value of the land, and not more than a quarter's rent shall be required to be paid in advance in any case where it is deemed necessary by the local authority[1] to require the payment of rent in advance. **Sec. 7.**

1. See note 1 to sec. 5 *supra*.
2. See, however, note 3 to sec. 5 *supra*.

(2.) The local authority[1] shall, for the purposes of all rates and taxes, be deemed to be the occupiers of the allotments which are let, but they shall cause the sums from time to time paid by way of rates and taxes in respect of the allotments to be apportioned among them, and cause the sum so apportioned in respect of each allotment to be certified to the tenant thereof, and such sum shall be added to the rent otherwise payable by the said tenant in respect of such allotment, and shall be deemed to be part of such rent, and be recoverable accordingly: Provided always, that for the purposes of the Parliamentary franchise, and the municipal and county and all other local franchises, the tenants shall be deemed to be the occupiers and such rates to have been paid by them, notwithstanding the provisions herein-before contained.

1. See note 1 to sec. 5 *supra*.

(3.) *One person shall not hold any allotment or allotments acquired under this Act exceeding one acre, and* an allotment shall not be sub-let.

The words in italics appear to be superseded, so far as Parish Councils are concerned, by sec. 26 (5) (proviso (*a*)) of the Local Government Act, 1894.

(4.) Provided that if at any time any allotment cannot be let in accordance with the provisions of this Act[1] and the regulations, the same may be let to any person whatever at the best annual rent which can be obtained for the same, and on such terms as may enable the local authority[2] to resume possession thereof within a period not exceeding twelve months if it should at any time be required to be let under the provisions aforesaid.

1. See note 2 to sec. 5 *supra*.
2. See note 1 to sec. 5 *supra*.

Sec. 7.

(5.)[1] No building other than a toolhouse, shed, greenhouse, fowlhouse, or pigsty shall be erected on any part of any allotment, and if any building other than as aforesaid is so erected, the local authority[2] shall forthwith pull down such building and sell and dispose of the materials thereof, and the proceeds of the sale shall be applicable in like manner as the rent of the allotment. If any building so allowed to be erected is erected upon an allotment, then at the end of the tenancy neither the local authority[2] nor the incoming tenant shall be bound to take any such building or pay any compensation therefor, but the outgoing tenant shall be at liberty, before the expiration of his tenancy, to remove the same, and, if he fails so to do, the local authority[2] may, after such expiration, pull down the building and dispose of the materials, and apply the proceeds in like manner as if it were a building prohibited to be erected.

1. The provisions of this section are extended by sec. 26 (5) (proviso (*b*)) of the Local Government Act, 1894.

2. See note 1 to sec. 5 *supra*.

(6.) A tenant of an allotment may, before the expiration of his tenancy, remove any fruit and other trees and bushes planted or acquired by him, for which he has no claim for compensation.

Recovery of rent and possession of allotments.

8.—(1.) The rent for an allotment let in pursuance of this Act,[1] and the possession of such allotment in the case of any warning to remove, or failure to deliver up possession of the same as required by law, may be recovered by the local authority[2] as landlords, in the like manner as in any other case of landlord and tenant.

(2.) If the rent for any allotment is in arrear for not less than forty days, or if it appears to the local authority that the tenant of an allotment not less than three months after the commencement of the tenancy thereof has not duly observed the regulations affecting such allotment made by or in pursuance of this Act,[1] or is resident more than one mile out of the *burgh or*[3] parish for which the allotments are provided, the local authority[2] may serve upon the tenant, or if he is residing out of the *burgh or* parish, leave at his last known place of abode in the *burgh or* parish, or fix in

Sec. 8.

some conspicuous manner on the allotment, a written notice determining the tenancy at the expiration of one month after the notice has been so served or affixed, and thereupon such tenancy shall be determined accordingly: Provided that in every such case the local authority[2] in default of agreement between the incoming and outgoing tenant shall on demand pay to the tenant whose tenancy is so determined any compensation due to him as an outgoing tenant; and such compensation shall be assessed by an arbiter appointed by the local authority,[2] or, if the tenant so elect, by a reference under the Agricultural Holdings (Scotland) Act, 1883. 46 & 47 Vict. c. 62.

1. See note 2 to sec. 5 *supra*.
2. See note 1 to sec. 5 *supra*.
3. See note 2 to sec. 6 (2).

(3.) Upon the ejectment of any tenant from an allotment, the court ordering the ejectment may stay proceedings until payment of the compensation, if any, due to the outgoing tenant has been made or secured to the satisfaction of the court.

12.—. . .

Power to make scheme for provision of common pasture.

Provided that the regulations made under this Act[1] may extend to regulating the turning out of animals on the common pasture, to defining the persons entitled to turn them out, the number to be turned out, and the conditions under which animals may be turned out, and fixing the charges to be made for each animal, and otherwise to regulating the common pasture.

1. See note 2 to sec. 5 *supra*.

14. The local authority[1] shall cause a register to be kept showing the particulars of the tenancy, acreage, and rent of every allotment let, and of the unlet allotments, and such register shall be open to the examination of ratepayers in the burgh or the county, as the case may be, in such manner as may be prescribed by the regulations made under this Act[2] by the local authority,[1] and any ratepayer of such burgh or county, without paying any fee, may take copies of or extracts from such register, and within one month after the fifteenth day of May in every year the local authority[1] shall cause an annual statement showing

Register of tenancies.

Sec. 14. their receipts and expenditure under this Act[2] in respect of the year ending on that day, and their liabilities outstanding on that day, to be deposited at some convenient place in the *burgh or*[3] county to which the statement relates, and any ratepayer may without fee inspect and take copies of such statement.

1. See note 1 to sec. 5 *supra*.
2. See note 2 to sec. 5 *supra*.
3. See note 2 to sec. 6 (2).

APPENDIX VIII.

SPECIAL DISTRICTS.

(*See Section* 44 *and Schedule IV. of the Local Government* (*Scotland*) *Act*, 1894.)

THE ADOPTIVE SECTIONS OF THE BURGH POLICE (SCOTLAND) ACT, 1892, AS AMENDED BY THE BURGH POLICE (SCOTLAND) ACT, 1903; SHOWING THE NECESSARY SUBSTITUTIONS IN ITALICS.

BURGH POLICE (SCOTLAND) ACT, 1892.

Definitions. **4.** The following words and expressions in *the adopted section or sections* shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say, . . .

(3) "Building" shall include any structure or erection of what kind *or* nature soever, *whether temporary or permanent*, and every part thereof, *but shall not include . . . any hoarding or similar structure to be used only for advertising purposes not exceeding twelve feet in height*. . . .

(6) "Cattle" shall include any horse, mare, gelding, foal, colt, filly, bull, cow, heifer, ox, calf, ass, mule, ram, ewe, wether, lamb, goat, kid, or swine: . . .

(10) "Court," where by the context it applies to a space contiguous to buildings, shall mean a court or recess or area forming a common access to lands and premises separately occupied, including any common passage or entrance thereto: . . .

(13) "House," where not otherwise expressed shall mean dwelling-house, and shall include out-houses and other erections, being pertinents of the house: . . .

(16) "Lands and premises" shall include all lands, springs, rights of servitude, dwelling-houses, shops, warehouses, vaults, cellars, stables, breweries, manufactories, mills, and the fixed or attached machinery therein, yards, places, and other heritages specified or included in the Acts for the valuation of lands and heritages in Scotland in force for the time being: . . .

(21) "Occupier" shall mean tenant or sub-tenant, or any person in the actual occupancy; and shall not include a lodger, or a person in the occupation as tenant of a furnished house let for a less period than one year; but shall include the person by whom such furnished house is so let: . . .

(22) "Owner" shall include joint owner, fiar, life-renter, feuar, or other person in the actual possession of or entitled to receive the rents of lands and premises of every tenure or description, and the factor, agent, or commissioner of such persons, or any of them, or any other person, who shall intromit with or draw the rents: . . .

(27) "Private court" shall mean a court maintained or liable to be maintained by persons other than the *district committee:* . . .

(28) "Private street" shall mean any street maintained or liable to be maintained by persons other than the *district committee:* . . .

(30) "Sheriff" shall include sheriff-substitute: . . .

(31) "Street" shall include any road, highway, bridge, quay, lane, square, court, alley, close, wynd, vennel, thoroughfare, and public passage or other

Sec. 4.

place within the *special district* used either by carts or foot passengers, and not being or forming part of any harbour, railway, or canal station, depôt, wharf, towing-path, or bank.

. . . . . .

(*a*) Lighting.

Streets to be lighted.

99. The *district committee* shall make provision for lighting in a suitable manner[1] all the streets,[2] and all other places within the *special district* which in their judgment should be lighted at the public expense, and shall provide, erect, and maintain such a number of lamps, lamp posts, and lamp irons, and other appurtenances, as may be necessary for that purpose, and shall light, or shall enter into contracts for lighting, and cause to be lighted, such lamps by means of gas, or such other light of an improved kind,[1] subject to the provisions of the Electric Lighting Act, 1882, or any Act or Acts amending or superseding the same, as they may find expedient; and the *district committee* are hereby authorised to order the lamp irons, lamp posts, and lamps to be fixed, either upon the sides of the causeways, streets, and roads, or upon the kerbstones of the pavements or footways, or at or upon the rails or in or upon the walls of buildings on the sides of the streets, as they shall think proper, without being liable to any claim for compensation thereanent. The Gasworks Clauses Act, 1847, the Gas and Water Works Facilities Act, 1870, the Gasworks Clauses Act, 1871, and the Gas and Water Works Facilities Act (1870) Amendment Act, 1873, and any Act amending the said Acts, shall, except in or so far as they are expressly varied by *the adopted section or sections*, be incorporated with *the adopted section or sections*; and the expression "the undertakers" in the said Acts shall mean the *district committee*.

1. The District Committee are not restricted to any special form of illuminant. See *Fleming* v. *Liddesdale District Committee of Roxburghshire*, 6th January, 1897, 24 R. 281; 1897, P.L.M. 132; 4 S.L.T. 229; 34 S.L.R. 250; 4 Co. Co. Cases 40; and the Board's 16th Report, 1910, p. lvii.

2. The word "street" is defined by sec. 4 of the Burgh Police Act, 1892, to include any road, highway, or bridge, &c., within the *special district* used either by carts or foot passengers. In the event of sec. 99 being adopted, the District Committee are required to make provision "for lighting in a suitable manner all the roads, and all other places within the special district which in their judgment should be lighted at the public expense." It was con-

tended in *Fleming and Others* v. *Liddesdale District Committee* (23rd Nov., 1897, O.H. 5 S.L.T. 247) that the requirement to light all the roads was qualified by the words "which in their judgment should be lighted at the public expense." The argument, however, was thought not to be well founded, and that those words applied only to the words immediately preceding them, viz., "all other places within the special district." **Sec. 99.**

Penalty for wilfully breaking lamps.

100. It shall be lawful for any one who shall see any person take away or wilfully break, throw down, or damage any lamp or lamp post, or wilfully extinguish the light, or damage the iron or appurtenances of any lamp, to seize and apprehend him, and for any person to assist in seizing the offender, and by the authority of *the adopted section or sections*, without any other warrant, to convey such offender to the police office, or to deliver him into the custody of a police officer, watchman, or constable or other officer, in order to be secured and taken before a *sheriff or any two justices of the peace;* and if the person accused of such offence, whether apprehended as aforesaid or afterwards cited for the same, shall be convicted thereof, he shall forfeit a sum not exceeding ten pounds for every such offence, and moreover shall pay such further sum as the *sheriff or any two justices of the peace* may assess as the amount of the damage done by him, and the payment of such damage shall be enforced in the same way as if it were an additional penalty.

Persons accidentally breaking lamps to repair the damage.

101. If a person shall, through negligence or accident, break any lamp set up in any street, or in any common stair or passage, or private court, and shall not, upon demand, make satisfaction for such damage, it shall be lawful for *the sheriff or any two justices of the peace*, upon complaint thereof being established in the police court, under the summary procedure authorised by *the adopted section or sections*, to order such sum of money to be paid as the damage proved shall amount to, which sum shall be recoverable as a civil debt.

Price to be paid for gas to be ascertained in case of dispute.

102. If the *district committee* and the owners of any works authorised by Act of Parliament to supply gas or other light within the *special district*, and with whom the *district committee* shall be desirous of contracting, shall not agree as to the terms and conditions of the supply, and as to the price to be paid for such supply, then such terms

Sec. 102. and conditions and price shall be settled by arbitration; and for that purpose the clauses of the Lands Clauses Acts, with respect to the settlement of disputes by arbitration, shall be, and are hereby, incorporated with *the adopted section or sections*, and the expression "the promoters" in the said Acts shall, in reference to *the adopted section or sections* mean the *district committee:* Provided always, that this enactment shall not apply to any *special district* where the supply of gas for public lamps is regulated by a Local Act if the provisions of such Local Act are inconsistent with this enactment.

Gas to be tested.

103. In order to secure a uniform supply of good gas in the *special district*, it shall be lawful for the *district committee*, where the gas is not supplied by them, after intimation to the manufacturers of the gas supplied within the *special district*, to provide suitable places and instruments for testing the quality and illuminating power of the gas supplied within the *special district*; and tests shall be made as often as may be necessary to obtain a fair and true test of the quality and illuminating power of the gas, and the results of such tests shall be final and conclusive of such quality and illuminating power when the tests were so made; and where the gas supplied within the *special district* is manufactured by the *district committee*, they shall be bound to provide suitable places and instruments for testing the quality and illuminating power of the gas supplied by them within the *special district*, and to publish the results at least once a month: Provided always, that the person to make the tests shall be appointed by the sheriff on the application of the *district committee*, or any seven electors or ratepayers in the *special district*, after such notice of the application and after such inquiry as to the sheriff shall seem proper; and the whole expense to be incurred in carrying out this enactment shall be defrayed by the *district committee* out of the *assessment levied in terms of section forty-four of the Local Government (Scotland) Act*, 1894.

Lighting of common stairs, &c.

104. The owner or owners of common stairs or passages or private courts, or of lands or premises having a right of access by any common stair or passage or private court, shall provide, fit up, and maintain, and renew, in such common stairs, passages, or private courts, all necessary lamps, brackets, and other means of lighting, and all neces-

sary means of extinguishing the light, and shall provide the necessary supply of gas or other light therefor; and such owner or owners shall further, on being required by the *district committee* within seven days next after the service of an order for that purpose, provide and fit up in such common stairs, passages, or private courts, such number of lamps, brackets, and other means of lighting, and all such means of extinguishing the light as the *district committee* may determine, and provide the necessary supply of gas or other light as may be required by the *district committee*, and shall maintain, alter, repair, and renew such lamps and brackets to the satisfaction of the *district committee*, and in default of compliance with any order of the *district committee* under this section such owner or owners shall, each only in respect of any act or default of his own, be liable to a penalty not exceeding forty shillings, and a daily penalty of a like amount: Provided always, that the owner or owners so providing a supply of gas or other light shall be entitled to recover the amount expended by such owner or owners in providing such supply from the occupiers of every such house or building in, or entering or having access by the common stair, passage, or court, each such occupier being liable to pay his proportionate part of such amount according to the rent payable by each such occupier respectively: Provided further, that the occupier or occupiers shall in all cases clean, light, and extinguish the lights, at such time or times as shall be ordered by the *district committee* by any resolution passed by them and published once weekly for at least two weeks in some newspaper published or circulating in the *special district;* and any occupier failing to comply with any such order or resolution shall be liable to a penalty not exceeding forty shillings, and to a daily penalty of like amount. Sec. 104.

Power to *district committee* to supply light and charge owner.

105.[1] The *district committee* may at any time, and from time to time as they think fit,[2] provide, fit up, and maintain and renew, in such common *stairs*, passages, or private courts, . . . all necessary lamps, brackets, and other means of lighting, and all necessary means of extinguishing the light, and provide the necessary supply of gas or other light therefor, and by their inspector of lighting, or any other officer or servant of the *district committee*, clean any lamps and brackets, and light and extinguish the same, and for all purposes aforesaid the inspector of lighting, or any other

Sec. 105. officer or servant of the *district committee*, shall be entitled to require and shall have access to and from all such common stairs, passages, or private courts at all times, and the *district committee* may, in such cases as they think fit, recover the expense they may incur as a debt from the owner, or if there are more owners than one, then proportionately from each owner according to the rental of the properties of each owner in any house or building or part thereof, to which access is obtained by such common stair, passage, or private court, and such owner or owners shall be entitled to recover the amount expended in providing the supply of gas or other light from the occupiers, each such occupier being liable to pay his proportionate part of such amount according to the rent payable by him: Provided always, that the said expense, recoverable by the *district committee* as aforesaid, shall not in the case of common stair lighting exceed twenty shillings per burner per annum, and in the case of all other lighting exceed twenty-five shillings per burner per annum.

1. The amendments introduced by the Schedule of the Burgh Police (Scotland) Act, 1903, are given effect to in the text of the section. Regard must, however, be had to the proviso to sec. 98 (3) of the Act of 1903, which enacts "that in so far as the principal Act has at the commencement of this Act been already adopted . . . in terms of the Local Government (Scotland) Act, 1894, by a County Council or a District Committee, no amendment made in the principal Act by this Act shall apply to the portions so adopted unless the . . . County Council or District Committee shall resolve to adopt such amendment." It was argued in the Sheriff Court of Lanarkshire that the amendments introduced by the Act of 1903 could not be adopted unless some of the enumerated sections had been adopted prior to the passing of the 1903 Act. This contention, however, was not upheld. The Sheriff pointed out that the object of the proviso to sec. 98 was to secure that where certain sections of the Act of 1892 had been adopted before the passing of the 1903 Act—that is, adopted unamended—the amendments of the latter Act should not apply unless specifically adopted, the implication being that for a district already formed at that date the amendments may thereafter be adopted. *Dunlop & Co., Ltd.*, v. *County Council of Lanark*, 31st December, 1909, 16 Co. Co. Cases 164.

2. It was held in the case of *Driscoll* v. *Commissioners of the Burgh of Partick*, 27th June, 1899, 7 S.L.T. 69; 6 County Council Cases 19, that though section 105 is permissive, and the commissioners are under no obligation to undertake the fulfilment of it, when they exercise their discretion in that matter by undertaking the charge of lighting common stairs, then they undertake a duty and come under an obligation to fulfil it.

. . . . . .

(*b*) Cleansing. **Sec. 107.**

Dust, &c., collected to be vested in *district committee.*

107.[1] The dust, night soil, dung, ashes, rubbish, filth, and manure, including slaughter-house manure, whether such slaughter-house is or is not the property of the *district committee* (excepting always cattle dung, mill dust, and the ashes of any kiln, engine, furnace, baker's oven, or the clinkers of any stove, and the refuse of any breweries, tanworks, soap, or chemical or other work),[2] within the *special district*, shall be vested in the *district committee*, who shall have power to sell and dispose of the same as they think proper, and the money arising therefrom shall be applied to the general purposes of *the adopted section or sections;* and the *district committee* shall cause all the streets and footpaths from time to time to be properly swept and cleansed, and all the dust, night soil, dung, ashes, rubbish, filth, and manure which is found on them, or in privies, sewers, cesspools, houses or other premises to be collected and removed at such convenient hours and times as they shall consider proper; and in all cases where there is insufficient access for a cart or wheelbarrow to the dungstead, ashpit, or privy, the owner shall be bound to provide such access to the satisfaction of the *district committee*, and, failing his doing so, he shall be bound to pay the extra expenses of the removal as the same shall be fixed by the *district committee*, and the same shall be recoverable. . . .

1. It was decided by the High Court of Justiciary (1) that section 107 was an integral part of the code laid down in the Burgh Police Act for the removal of refuse, and its adoption was essential to the exercise of the compulsory powers contained in the other adoptive sections; (2) that the resolution adopted by the district committee in forming the special district exhausted their powers under the requisition, and a new requisition was necessary before they could competently adopt section 107. *Hill* v. *Grant*, 24th January, 1899, 1 F. (Just. Cases) 42; 6 S.L.T. 371; 36 S.L.R. 317.

2. In a special scavenging district embracing a fishing village a difficulty arose as to the removal of the refuse peculiar to such a district. The fishermen were largely engaged in line fishing, which necessitated the use of large quantities of mussel bait. The result of this was to produce an amount of refuse in the shape of mussel shells and fish offal. The question for consideration was whether under this section the refuse became vested in the local authority and fell to be removed by them. The view taken by the Board was that it did become so vested They were of opinion that the material could not be held to be the refuse of a work in the sense of that section, and did not therefore fall within the exceptions stated.

In one instance where a District Committee proposed to frame

Sec. 107. a bye-law refusing to collect certain kinds of refuse, the Board declined to give their consent under Schedule IV. (3) of Act in respect that it was not competent for the District Committee to define by a bye-law the class of refuse they were prepared to remove.

District committee may provide lands, &c., for deposit of soil and materials.

108. The *district committee* may from time to time provide places convenient for the deposit, treatment, and disposal of the dust, night soil, dung, ashes, rubbish, filth, and manure to be collected under the authority of *the adopted section or sections*, and for stabling and keeping all horses, carts, implements, and other things required for the purposes of *the adopted section or sections;* and for any of such purposes the *district committee* may purchase or hire[1] any lands or premises by them considered necessary, either within or beyond the boundaries of the *special district*, and may for this purpose acquire the said lands and premises otherwise than by agreement under the provisions of the Lands Clauses Acts with the authority of the *Local Government Board for Scotland* in the manner herein-before provided, or they may cause any new buildings, machinery, appliances, and plant to be erected and provided upon any lands which shall be purchased or hired by them under the provisions of *the adopted section or sections*.

1. Where lands are hired the lease should be in the name of the District Committee, not of the sub-committee for the special district.

Removal of dust, ashes, and other refuse.

109. The *district committee* may cause carts, having a covering proper to prevent the escape of the contents thereof, to pass through any street or district every morning between such hours as may be fixed by the *district committee* for the purpose of collecting and removing the dust, ashes, and other material[1] composing the *special district* refuse from the lands and premises in and adjoining such street or district; and may by public notice in one or more newspapers published or circulating in the *special district*, or by handbills posted in such street or district, require the occupiers of lands and premises within and adjoining such street or district to cause all their dust, ashes, and other material composing the *special district* refuse to be deposited in a suitable box to be approved of by the *sanitary inspector*, and placed daily on the outer side of the *footway* opposite the lands and premises occupied by them, or at such other place near thereto as the *sanitary inspector* shall appoint, not later than the time fixed as aforesaid: and when such daily service is in operation in any such

street or district, the *district committee* may direct any ashpit in connexion with the lands and premises in or adjoining such street or district to be shut up or removed,[2] and every occupier failing to comply with such notice shall be liable to a penalty not exceeding ten shillings for each offence. **Sec. 109.**

1. See note 2 to sec. 107.

2. A District Committee having formed a special scavenging district and adopted sections 107-127 of the Burgh Police Act, 1892, desired to exercise the powers given by this section to close ashpits. They felt a difficulty, however, as to whether they were entitled to call upon the owners to shut up or remove the ashpits, and also as to how such an order, assuming it to be competent, could be enforced, and they applied to the Board for advice. The Board took the view that the question whether the order of the District Committee should be addressed to the owner or to the occupier depended on the nature of the operation which the District Committee sought to have carried out. If by "shutting up" the ashpit nothing more was meant than discontinuing its use, the occupier, being sole occupier, might be directed to shut it up. If, however, the District Committee desired to have the ashpit permanently built up, or if they desired to have it *removed*, the Board thought the owner must also be applied to.

As to the question how an order to remove an ashpit is to be enforced, the Board thought that it could only be enforced by proceedings founded on section 109, and that any bye-law that might be considered necessary should be made in terms of section 127. (3rd Report, 1896-97, p. xxx.)

110.[1] The *district committee* may erect or continue public water-closets or earth closets, and latrines and urinals, in suitable places, and may place movable or fixed boxes for the temporary deposit of street sweepings in any of the streets in such situations as shall, in the opinion of the *district committee*, cause the least inconvenience or nuisance, and may defray the expense thereof and of keeping the same in good order. Public conveniences.

1. Sec. 104 (2) (*b*) of the Burgh Police (Scotland) Act, 1903, provides that "this section shall extend to lavatories, waiting-rooms, and other similar accommodation, and any constructions under said section may be in whole or part below the street level."

111. The *district committee* shall, as often as in their opinion occasion requires, cause the streets to be watered, and they may contract with any water company or person for a supply of water for that purpose, and for cleansing the sewers and drains; and if necessary they may place pipes, conduits, and pumps in any such streets, or provide any other works and engines proper for that purpose, and remove and alter the same when and as they think proper. Streets to be watered, and wells, pumps, &c., provided.

Sec. 112. Scavengers.

112. The *district committee* shall employ a sufficient number of scavengers, or contract with any person for sweeping, cleansing, and watering the streets, including the *footways*, and for removing all dust, ashes, rubbish, and filth therefrom, and for emptying privies and cesspools in the manner by this Act directed; and every such contractor who in any instance fails to discharge any duty imposed on him by his contract shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty for obstructing scavengers.

113. Every person who refuses to permit the scavengers to remove such dirt, ashes, or rubbish as by *the adopted section or sections* they are authorised to do, or who obstructs the scavengers in the performance of their duty, shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty on persons other than scavengers removing dirt.

114. Every person other than the person employed by the *district committee*, or by some person contracting with the *district committee* for that purpose, who collects or carries away any dung, night soil, dust, ashes, rubbish, or filth by *the adopted section or sections* directed to be collected or removed by the *district committee*, or by persons employed by them, shall be liable to a penalty not exceeding forty shillings for every such offence.

Sweeping and washing of common stairs.

115. The occupiers of every house, flat, or storey having entrance by a common stair shall cause the landing and the stair immediately below the flat or storey possessed by them to be kept clean to the satisfaction of the sanitary inspector. If any flat or storey of the tenement be unoccupied, the occupiers of the flats or storeys above shall cause the landings and stairs below, leading to such empty flat or storey, to be kept clean and washed downwards to the next house which shall be occupied, and if the top flat or storey be unoccupied, then the stair leading thereto shall be kept clean by the occupier of the flat or storey immediately below such top flat or storey; and any water-closet or other closet used in common, and any passage or continuation of a passage to any area, back green, or any ground used in common, shall be kept clean and washed by the occupiers of the several houses in such tenement in weekly rotation; and all areas and common passages leading to cellars shall be cleansed weekly by the occupiers of the

cellars in the same, or by parties having a right to use such areas or passages, or who shall use such areas or passages. In cases where the common stair enters from or off a street (public or private) above, the occupiers of every house, flat, or storey shall keep clean the passage and stair from such street or flat immediately above them downwards to the house, flat, or storey possessed by them, and also cleanse any area or any passage leading to any ground or back green connected therewith; and if any flat or storey of the tenement be unoccupied, the occupiers of the flats or houses occupied shall keep clean the stair and passages upwards to such street, and clean the area, if there be one, or to the next house that shall be occupied; and owners or persons having charge of houses or buildings shall clean out unoccupied cellars and apartments. The occupiers of every house or building having entrance from a common passage shall, in weekly rotation, cause such passage and steps to the street to be kept clean: Provided always, that where there is no house or other occupied building having entrance from such passage, the duty of keeping clean the passage and steps to such street shall devolve upon the occupiers of the several flats above, in weekly rotation. Every person failing in any of the above matters shall for each offence be liable to a penalty not exceeding five shillings. **Sec. 115.** Sweeping and washing of common passages.

116. The *district committee* shall keep properly swept and cleansed the *footway* of every street, so far as is reasonably practicable, and shall collect and remove from the said *footways*, so far as is reasonably practicable, all dust, ashes, rubbish, filth, and snow. *Footways* to be swept by occupier.

117. The owners of all common stairs and common passages, *and walls and roofs of closes and walls of open courts*,[1] shall whitewash or, at the option of the owner, paint the same once every year if required to do so by the sanitary inspector, and the owners of all premises occupied as dwelling-houses let for shorter periods than six months shall whitewash such premises, and every part and pertinent thereof, to the satisfaction of the sanitary inspector, once every year, if required to do so by such officer; and any such owner failing to do so shall be liable to a penalty not exceeding forty shillings. Common stairs and houses let for short periods to be cleansed by owners.

1. The words in italics represent the amendment effected by the Schedule of the Burgh Police (Scotland) Act, 1903.

Sec. 118. . . . medical officer, or inspector may enter and cleanse dwelling-houses, &c., at expense of owners.

118. It shall be lawful, at all reasonable times, for the . . . medical officer of health, and sanitary inspector, to enter all dwelling-houses and other premises, and their pertinents, where he has reason to believe that they are not in a cleanly condition, and to cleanse and purify the same, and to remove any filth therefrom, at the expense of the owner of such dwelling-houses and other premises if they are unoccupied, but if they are occupied then at the expense of the occupier: Provided always, that if the owner or occupier of such dwelling-house or other premises shall object to the entrance of such . . . medical officer, or inspector as aforesaid, it shall not be lawful for such . . . medical officer, or inspector, to enter without a warrant from the *sheriff or any two justices of the peace* authorising him to do so, and the *sheriff or any two justices of the peace* are hereby authorised to grant such warrant.

Penalty on keeping dwelling-houses in dirty condition.

119. Every person occupying any part of a building let out as separate dwelling-houses who shall keep the same, or any building or place appurtenant thereto, in a dirty, unwholesome, or unhealthy condition, after notice shall have been served upon him by the sanitary inspector to cleanse the same, shall be liable to a penalty not exceeding forty shillings, and to a further penalty not exceeding twenty shillings for every day during which such offence shall continue after conviction.

Areas, &c., to be cleansed by occupiers.

120. All private courts, yards, areas, roofs of outbuildings in the same, and other places which are not cleansed by scavengers appointed under *the adopted section or sections*, shall be kept clean to the satisfaction of the sanitary inspector, by or at the expense of the occupiers of such courts, yards, areas, or other places respectively; and if such courts, yards, areas, roofs therein, or other places shall not be so kept clean, the occupiers thereof, or such of them as in the judgment of the *sheriff or any two justices of the peace* may be found to be the real offender, shall, in addition to the expense of cleaning the same, be liable to a penalty not exceeding ten shillings for every such offence: And the word "occupiers" in this section shall include all persons having a right to use such courts, yards, areas, or other places for any purpose whatever, or if the *district committee* think fit they may cleanse all such private

courts, yards, areas, roofs therein, and other places, and charge the expense thereof to the *assessment levied in terms of section forty-four of the Local Government (Scotland) Act*, 1894, or if the property is unoccupied may charge the expense thereof to the owners. Sec. 120.

121. All stables and byres, and areas therewith connected, and roofs of outhouses, shall be constantly kept in a clean condition to the satisfaction of the sanitary inspector by the occupier thereof under a penalty not exceeding twenty shillings for each offence; and it shall be the duty of the inspector from time to time to examine the state of all such places, with a view to the enforcement of this enactment. Stables and byres to be kept clean.

122. It shall not be lawful to deposit, except for the purpose of removal, any cattle dung upon the streets (mews or stable lanes excepted); and no cattle dung, wherever lawfully kept, shall be mixed with any dung, soil, dirt, ashes, or filth declared by *the adopted section or sections* to be the property of the *district committee;* and where any cattle dung shall be found in any street (excepting as aforesaid), or shall be so mixed, the same shall be taken possession of by the *sanitary inspector* and sold, and the proceeds of such sale accounted for and applied to the police purposes of *the adopted section or sections.* Horse and cow dung to be kept off the streets.

123. It shall be lawful for the *district committee*, after inspection and report by the chief constable or sanitary inspector, to regulate and limit the time within which all common necessaries and dungsteads shall be emptied and cleaned out; and if any person, under obligation by contract or otherwise to empty or clean out such places, shall fail so to do within the time so limited, such person shall be liable in a penalty not exceeding twenty shillings, besides forfeiture of any dung in such place; which dung the sanitary inspector, or any officer authorised by the *district committee*, may remove or dispose of as aforesaid. Dungsteads, &c., to be cleaned out.

124. Every person who shall lay, or cause to be laid, on any street any dung or manure, or any hay or straw, for the purpose of removing the same, shall remove and take the same away before eight of the clock of the morning of the day on which it shall be so laid in any street, from the As to removal of dung.

Sec. 124. first day of October to the first day of April, and before seven of the clock of the morning from the first day of April to the first day of October; and if dung or manure shall be allowed to remain on any part of such streets after the said hours, the person offending shall be liable to a penalty not exceeding forty shillings for each offence, and that over and above the forfeiture of the dung or manure, which shall be removed and disposed of as aforesaid.

Penalty for conveying offensive matter at improper times.

125. The *district committee* may from time to time fix the hours within which only it shall be lawful to remove any offensive matter or thing from any premises within, or into, or through the *special district*: and when the *district committee* have fixed such hours, and given public notice thereof in such manner as they may deem proper, every person who removes any offensive matter or thing from any premises within, or into, or through the *special district* at any time, except within the hours so fixed, and every person who at any time, whether such hours have been fixed by the *district committee* or not, uses for any such purpose any cart or carriage not having a covering proper for preventing the escape of the contents of such cart or carriage, or of the stench thereof, or who wilfully or negligently spills any such offensive matter or thing in the removal or passage thereof, or who does not carefully sweep and cleanse every place in which any such offensive matter or thing has been placed or unavoidably spilled, shall for every such offence be liable to a penalty not exceeding forty shillings, and in default of the apprehension of the actual offender, the driver or person having charge of the cart or carriage employed for any such purpose shall be deemed to be the offender.

As to laying down dung on fields, nursery, or garden grounds.

126. Nothing in *the adopted section or sections* contained shall have the effect of prohibiting any person laying down dung on any field, nursery, or garden ground for the purpose of manuring the same; but if in any case the medical officer of health shall certify that the manure so laid down in any place within the *special district* is offensive or prejudicial to health, the *sheriff or any two justices of the peace* may order it to be removed or otherwise disposed of forthwith; and every person failing to comply with such order shall be liable to a penalty not exceeding five pounds, besides the forfeiture of such manure.

Sec. 127.

127. The *district committee* shall have power to make bye-laws for enforcing the provisions of the preceding sections with reference to cleansing. *District committee* may make bye-laws.

. . . . . .

Naming the Streets and Numbering the Houses.

144. The *county council* shall from time to time cause the houses and buildings in all or any of the streets to be marked with numbers, as they think fit, and shall put up or paint on a conspicuous part of some house, building, or place, in legible characters, at or near each end, corner, or entrance of every such street, the name of such street; and no name shall be given to any street except by the *county council* or with their consent, and they shall have power to alter the name and the numbers of any streets; and every person who destroys, pulls down, or defaces any such number or name, or puts up any number or name different from the number or name put up, or caused to be put up, by the *county council*, shall be liable to a penalty not exceeding forty shillings for every such offence. Houses to be numbered and streets named.

145. The owners of houses and other buildings in the said street shall mark their houses with such numbers as the *county council* direct, and shall renew such numbers as often as they become obliterated or defaced; and every such owner who fails, within one week after notice for that purpose from the *county council*, to mark his house with a number to the satisfaction of the *county council*, or to renew such number when obliterated, shall be liable to a penalty not exceeding forty shillings; and the *county council* shall cause such numbers to be marked or to be renewed, as the case may require, and charge the cost thereof to the *special district rate*. Numbers of houses to be marked and renewed by owners.

. . . . . .

Obstructions and Line of Streets.

158.[1] When any house or building has been taken down in whole or in part in order to be altered, or is to be rebuilt, the *county council* may require the same to be set backwards to or toward the line of the street, or the line of the adjoining houses or buildings, or such other line as may be fixed by the *county council* in such manner as the Houses projecting beyond line of street, when taken down, to be set back.

Sec. 158. *county council* may direct, for the improvement of such street: Provided always, that the *county council* shall make full compensation to the owner of any such house or building for any damage he may thereby sustain, which compensation may be settled by mutual agreement, or in the same manner as compensation for land to be taken under the provisions of the Lands Clauses Acts is directed to be settled, and shall form a charge against the *special district rate*.

1. Sec. 104 (2) (*h*) of the Burgh Police (Scotland) Act, 1903, provides that this section "shall extend to every case where any new house or building is proposed to be erected."

. . . . . .

PRECAUTIONS DURING THE CONSTRUCTION OR REPAIR OF BUILDINGS AND STREETS, AND IN REGARD TO OLD AND RUINOUS TENEMENTS.

Ruinous or dangerous buildings to be taken down or secured.

191. If any building or wall, or anything affixed thereon, be deemed by the *county or district sanitary inspector* to be in a ruinous state, or dangerous to passengers, or to the occupiers thereof or of the neighbouring buildings, he shall immediately cause such occupiers endangered thereby to remove from the occupancy of such buildings until the same are put into a safe condition, and shall cause a proper hoard or fence, or props, to be put up for the protection of passengers, and shall also cause, if he shall judge necessary, the neighbouring buildings to be properly shored up, and shall cause notice in writing to be given to the owner of such building or wall, if he be known, and shall also cause such notice to be put on the door of such building or on such wall, or on a conspicuous part thereof, or otherwise to be given to the occupier thereof, if any, requiring such owner forthwith to take down, secure, or repair such building, wall, or other thing, or as the case shall require; and if such owner do not begin to repair, take down, or secure such building, wall, or other thing within the space of three days after any such notice has been so given or put up as aforesaid, and complete such repairs or taking down or securing as speedily as the nature of the case will admit, such *county or district sanitary inspector* may make complaint thereof to the sheriff; and it shall be lawful for the sheriff, after inquiry, to order the owner of such building, wall, or other thing to take down, rebuild,

repair, or otherwise secure, to the satisfaction of such *county or district sanitary inspector*, the same, or such part thereof as appears to them to be in a dangerous state, within a time to be fixed by the sheriff; and in case the same be not taken down, repaired, rebuilt, or otherwise secured within the time so limited, the *county council* shall, with all convenient speed, cause all or so much of such building, wall, or other thing as shall be in a ruinous condition and dangerous as aforesaid to be taken down, repaired, rebuilt, or otherwise secured in such manner as shall be requisite; and all the expenses of enforcing such removal and of putting up every such fence, and of shoring up such buildings, and of taking down, repairing, rebuilding, watching, or securing such building, wall, or other thing, shall be paid by the owner thereof. Sec. 191.

192. If the owner of such building or wall, or thing affixed thereon, can be found, and if, on demand of the expenses aforesaid, he neglect or refuse to pay the same, the sheriff shall, on a certificate of such demand and neglect or refusal, signed by the *county clerk*, grant decree against such owner for payment thereof, on which decree all legal diligence may proceed, or the *county council* may proceed against such owner for the recovery of the said expenses in terms of the general provisions for recovery of expenses under this Act, or otherwise as accords of law. Expenses to be levied on owner.

193. If such owner cannot be found, or if such expenses are not otherwise fully recovered, the *county council*, after giving twenty-eight days' notice of their intention to do so, by posting a printed or written notice in a conspicuous place on such building or wall, or on the land whereon such building or wall stood, and by sending through the post office to such owner's last known address a copy of such notice, may take such building or land, provided that such expenses be not paid or tendered to them within the said twenty-eight days, making compensation to the owner of such building or land in the manner provided by the Lands Clauses Acts in the case of lands taken otherwise than with the consent of the owners and occupiers thereof, and the *county council* shall be entitled to deduct out of such compensation the amount of the expenses aforesaid, and may thereupon sell or otherwise dispose of the said building or land for the purposes of this Act. If owner cannot be found, *county council* may take the house or ground, making compensation.

Sec. 194.

County council may sell materials, restoring to the owner surplus arising from sale.

194. If any such building or wall as aforesaid, or any part of the same, be pulled down by virtue of the powers aforesaid, the *county council* may sell the materials thereof, or so much of the same as shall be pulled down, and apply the proceeds of such sale in payment of the expenses incurred in respect of such building or wall; and the *county council* shall restore any surplus arising from such sale to the owner of such building or wall on demand; nevertheless, the *county council*, although they sell such materials for the purposes aforesaid, shall have the same remedies for compelling the payment of so much of the said expenses as may remain due, after the application of the proceeds of such sale, as are herein-before given to them for compelling the payment of the whole of the said expenses.

Ruinous buildings belonging to two or more owners may be sold.

195. If any houses, buildings, or areas have become waste and ruinous within the *county*, and have become receptacles for filth and other nuisances, or unsafe and unfit for use and occupation, and which, being held by two or more joint owners, cannot be rebuilt or disposed of to advantage without the consent of all the parties interested therein, and the same are allowed to continue in a waste or ruinous or unsafe state in consequence of the parties being unable or unwilling or delaying to agree as to the sale of rebuilding thereof, it shall be lawful to the sheriff, upon the petition of the *procurator fiscal*, or of the *county council* or *the county or district sanitary inspector*, or any owner or party interested in any such houses, buildings, or areas, to call all parties interested therein before the sheriff, in the usual manner and form followed in his court, and to order such houses, buildings, or areas to be valued by not less than three men of skill, upon oath, who shall distinguish the portions of the subjects, and the corresponding proportion of the appraised value, which belong to the several parties interested, and thereupon to give each party the option to buy and acquire from, or to sell and convey to the others, their respective portions of or interests in such houses, buildings, and areas, agreeably to such valuation, or at such other price as shall be agreed on amongst themselves, and that within a reasonable time to be fixed by the sheriff, not exceeding six weeks.

How sale to be carried through.

196. If any of the said parties fail to take advantage of the said option within the time so fixed, or shall not be able to agree as to which shall be the buyer and which the seller,

it shall be lawful to the said sheriff to cause such houses, buildings, and areas to be exposed to sale by public auction at a price not being less than the appraised value, and in case of no offers to reduce the upset price from time to time, and to sell the same to the highest bidder, under such regulations, and upon such conditions, and after such public notice, by advertisement in the newspapers or otherwise, as the sheriff shall appoint, and the purchaser thereof shall be then bound within ten days after the sale, or within such time as may be fixed by the sheriff, to consign the purchase money in any bank to be named by the sheriff, upon a receipt or voucher subject to the orders of the sheriff, otherwise the sale to be void and null, and the money so deposited shall remain at interest for the behoof of all parties interested therein, and subject to the future orders of the sheriff. Sec. 196.

197. Upon such deposit being so made, the sheriff shall pronounce his decree or warrant declaring the purchase duly completed, and authorising immediate possession of the tenements so sold to be given to the purchaser thereof; and such warrant or decree shall, upon being registered in the proper register of sasines, be a valid and sufficient title to such purchaser. Completion of purchaser's title.

198. In case the purchaser at any such sale as aforesaid shall fail to fulfil the conditions thereof within the time thereby prescribed, it shall be lawful to the sheriff to cause the tenements to be re-exposed and sold anew; and such sale shall proceed in like manner as the first sale; and the sheriff shall continue, in case of failure as aforesaid, to cause the said subjects to be re-exposed for sale, until the same shall be sold, and the price thereof consigned or deposited in bank as aforesaid. If purchaser do not fulfil conditions of sale, tenement may be re-sold.

199. Upon the completion of any such sale, the sheriff shall, on the application of any of the parties concerned, after such inquiry as he may deem expedient, proceed to ascertain and determine the extent and value of the share of each party claiming interest in the tenements so sold, and to apportion the price and order payment thereof to the several parties accordingly, subject always to such finding or order in respect of costs as the sheriff may pronounce. Apportionment of price.

Sec. 200. Ruinous tenements may be sold.

200. If any houses, buildings, or areas have become waste and ruinous, or have become receptacles for filth and other nuisances, or unsafe and unfit for use and occupation, the *county council* may, by a notice addressed to the owner if his address shall be known, or if not known by a notice affixed to a conspicuous part of such houses, buildings, or areas, require the same to be rebuilt or otherwise put into a state of repair to their satisfaction, within three months from the date of such notice; and in the event of *the owner failing to commence any operations ordered within one month of the date of the said notice, or of his thereafter failing to proceed with the said operations continuously, and complete them within the period specified therein*,[1] the *county council* may apply to the sheriff for warrant to sell such houses, buildings, or areas, and it shall be lawful to the sheriff to order the same to be valued, and exposed for sale by public auction, and to sell the same, and such sale shall be made and carried out, or re-sale effected, the price deposited and applied, and the purchaser's title completed, in the way and manner herein-before directed with reference to waste and ruinous buildings, houses, or areas within the *county*, held by two or more joint owners.

1. These words represent the amendment effected by the Schedule of the Burgh Police (Scotland) Act, 1903.

. . . . . .

Soil Pipes and Water-closets.

Construction of ashpits, &c., and use of same.

253. The situation, dimensions, drainage, materials, mode of access, and construction of every ashpit shall be subject to the approval of the *district committee*, and shall be of sufficient size to contain the ashes and dry refuse likely to accumulate between such visits of the scavengers as the *district committee* may prescribe: Provided further, that if any person, not being the owner or occupier of the house or premises to which any ashpit belongs or is attached, shall deposit or use the said ashpit for the deposit of ashes or dry refuse, or any other matter or thing, such party shall be guilty of an offence, and on conviction thereof liable to a penalty not exceeding forty shillings.

Owners to remove cesspools after notice.

254.[1] The owner of any privy, ashpit, cesspool, or midden, extending wholly or partially under or close to any room built before or after *the adopted section or sections*

comes into operation in the *special district*, shall within one month after notice to that effect from the *district committee* remove or cleanse and build up such privy, ashpit, cesspool, and midden. **Sec. 254.**

1. Sec. 24 of the Burgh Police (Scotland) Act, 1903, provides that "if any requirement under . . . section two hundred and fifty-four or section two hundred and fifty-five of the principal Act is not complied with, the owner shall be liable to a penalty not exceeding forty shillings, and to a further penalty not exceeding five shillings for each day during which such non-compliance continues." See note 1 to sec. 105, the case there cited having reference particularly to the power to adopt sec. 24 of the 1903 Act where some of the enumerated sections had not been adopted prior to the passing of that Act.

255.[1] Where any privy, ashpit, or cesspool is certified by the medical officer of health to be prejudicial to health, of defective construction, or without drainage, or in a bad state of repair, or to be so situate that the removal of filth or refuse therefrom is prejudicial to health, the *district committee* may, by written notice, require the owner of the same within a reasonable time, to be specified in the notice, to reconstruct, or alter, or repair, such privy, ashpit, or cesspool or to convert the privy into a water-closet or earth closet, all as the case may require, to the satisfaction of the *district committee;* and the *district committee* may, if they think fit, order the removal of such privy, ashpit, or cesspool. Power to enforce conversion of privies into water-closets.

1. See note to sec. 254 *supra*.

. . . . . .

(*c*) Public Baths, &c.

309.—The *district committee* may after resolution, *with consent of the county council*, but not otherwise, purchase, rent, or otherwise provide, either within the *special district*, or at a reasonable distance therefrom, suitable and convenient premises to be used for public baths and wash-houses, and public covered or open bathing places, and public drying grounds, for the use and accommodation of the inhabitants within the *special district* in washing and drying clothes and other articles, and may fit up the same respectively with all requisite and proper conveniences, and from time to time enlarge, renew, and repair the same respectively, and afford the use thereof respectively to such inhabitants at such reasonable charges, and under and subject to such bye-laws Public baths and drying grounds.

Sec. 309. as the *district committee* may deem expedient; and every person who offends against any such bye-laws shall be liable to a penalty not exceeding forty shillings for every offence.

Proportion of baths for working classes.

310. The number of baths for the use of the working classes provided by the *district committee* shall not be less than twice the number of the other baths of higher class.

Charges for use of baths.

311. The *district committee* may make such reasonable charges for the use of such baths, bathing places, wash-houses, and drying grounds as they think fit.

Recovery of charges for use of baths, &c.

312. For the recovery of the charges at such wash-houses and drying grounds, the officers, servants, and others having the management thereof may, at the period of using the same, or at any subsequent time, detain the clothes or other goods and effects, in or upon any such wash-house or drying ground, of any person refusing to pay the charge to which such person may be liable, or any part thereof, till full payment thereof be made; and in case such payment be not made within seven days, the *district committee* may sell such clothes, goods, and effects, or any of them, returning the surplus proceeds of such sale, after deducting the unpaid charge and the expenses of such detention and sale, and the unsold articles, if any, on demand to such person.

Publication of bye-laws in regard to baths, &c.

313. A printed copy or sufficient abstract of the bye-laws made by the *district committee* relating to the use of such baths, bathing places, and wash-houses, so far as regards every such bath, bathing place, or wash-house, shall be put up in such bath room, bathing place, and wash-house.

Sale of baths, &c., on discontinuing them.

314. Whenever any of such public baths, bathing-places, wash-houses, or drying grounds are deemed by the *district committee* to be unnecessary or too expensive to be kept up, the *district committee* may after resolution, *with the consent of the county council*, but not otherwise, discontinue the same, and sell the lands, buildings, and materials for the best price that can reasonably be obtained, and convey the same accordingly; and the purchase money shall be paid to the treasurer of the *district committee*, and be disposed of for behoof of the *special district* as the *district committee* direct.

The following Circular has been issued by the Local Government Board for Scotland to Parish Councils as to the Form of Requisitions under Sec. 44 (1) of the Local Government (Scotland) Act, 1894 :—

LOCAL GOVERNMENT BOARD FOR SCOTLAND,
Edinburgh, 7th November, 1895.

Local Government (Scotland) Act, 1894.

Special Districts Under Section 44.

Sir,—The attention of the Board has been directed to certain cases in which inconvenience and delay have arisen from the procedure adopted by Parish Councils in making requisitions to the District Committee under Section 44 of the Local Government Act, 1894, and by the vagueness of the proposals submitted.

There are a few points to which the Board desire to draw the attention of Parish Councils—

(1.) The requisition should be in proper form. An informal letter from the Inspector or Clerk, simply stating that the Parish Council desire to have a Special District formed, cannot be regarded as a requisition in the sense of the Statute. The requisition should bear that it is made by the Parish Council; should specify the locality where, and the purpose for which, the Special District is to be formed; and should be properly signed on behalf of the Parish Council. A form which may be used by Parish Councils is appended.

(2.) While the duty of defining the boundaries of the Special District is laid by Statute on the District Committee, it will be advisable for the Parish Council, wherever practicable, to specify either in the requisition itself or in a covering letter the boundaries which they suggest for the Special District.

(3.) Similarly, it would be convenient if the Parish Council were to indicate what sections of the Burgh Police Act should, in their opinion, be adopted.

(4.) The Parish Council should supply the District Committee with all the information which may be reasonably required to enable them to come to a decision regarding the requisition.

I am,

Sir,

Your obedient Servant,

MALCOLM M'NEILL,
Secretary.

The Inspector of Poor.

SUGGESTED FORM OF REQUISITION BY PARISH COUNCIL.

Unto the District Committee of the District of the County of (*or, where the County is not divided into Districts*, Unto the County Council of) the Requisition of the Parish Council of under Section 44 of the Local Government (Scotland) Act, 1894—

The Parish Council of do hereby, in terms of sub-section (1) of Section 44 of the Local Government (Scotland) Act, 1894, call upon the District Committee (*or* County Council) to consider the propriety of forming, and thereafter to form the village of (*or* part of the Parish) as described in the note appended hereto, or according to such other description or boundaries as the District Committee may determine, into a Special District for the purpose of*

and to resolve that Sections† of the Burgh Police (Scotland) Act, 1892, or such other Sections as the District Committee may determine, be adopted within the said Special District.

Signed on behalf and by authority of the Parish Council, this day of 19 .

Chairman

Clerk (or Inspector of Poor.

Boundaries of Special District suggested by Parish Council—

* State the purpose, using as far as possible the words of the Statute.
† Specify the Sections.

APPENDIX IX.

ORKNEY AND ZETLAND SMALL PIERS AND HARBOURS ACT, 1896.

[59 & 60 Vict. Ch. 32.]

An Act to facilitate the Construction of Small Piers and Harbours in the Counties of Orkney and Zetland.
[14th August 1896]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act shall be cited as the Orkney and Zetland Small Piers and Harbours Act, 1896.

Formation of special districts for harbour purposes.
57 & 58 Vict. c. 58.

2.—(1) It shall be lawful for a parish council, or for any two or more parish councils, or for not fewer than ten parish electors, of any landward parish or parishes within the meaning of the Local Government (Scotland) Act, 1894, in the counties of Orkney and Zetland, to make a requisition in writing to the district committee of the county council of the respective county, calling upon them to form such parish or parishes or any portion thereof within the district into a special district for the following purposes, or any one or more of them; that is to say, the construction and maintenance of small harbours, piers, and boatslips.

(2) Upon such requisition being received, the district committee shall be bound to meet after twenty-one clear days' notice, and shall consider the propriety of forming such parish or parishes or landward part of a parish or parishes or portion thereof into a special district, and shall

Sec. 2. by resolution either approve or disapprove of the formation of a special district for the purposes stated in the requisition, and if they approve thereof, shall define the boundaries of such special district. Such resolution, subject to the consent of the county council and the Local Government Board, shall be final; and in giving or refusing such consent the county council and the Local Government Board respectively shall take into consideration the whole circumstances of the case, including the amount of rates levied for the time being within the proposed special district and the sanitary requirements of the said district; and the county council and the Local Government Board respectively may consent to a resolution either with or without modifications. In the event of the district committee, or county council, or the Local Government Board disapproving of the formation of a special district as proposed in the requisition, it shall not be competent to make another requisition to the same effect until after the expiration of twelve months. A copy of every such resolution shall be forthwith published in one or more newspapers circulating in the district, and transmitted to the Local Government Board and to the county council.

(3) The area of a special district formed under the provisions of this Act may be enlarged or altered, and two or more special districts may be combined, from time to time, by resolution of the district committee or committees, as the case may be, with or without a requisition, but subject to the consent of the county council and of the Local Government Board.

(4) Any expenditure attending the carrying out within a special pier and harbour district of the purposes of this Act, or any of them, shall be paid out of an assessment to be imposed by the county council with the consent of the Local Government Board within the special district, to be called the special district (pier and harbour) rate, and levied along with and as an addition to and in excess of the public health rate, and with the same remedies and modes of recovery:—

Provided that—

(*a*) Such special district (pier and harbour) rate shall not exceed fifteenpence in the pound on the annual

value of the lands and heritages within the special district as ascertained for the purposes of the Poor Law (Scotland) Act, 1845: 8 & 9 Vict. c. 83.

(*b*) When a special district is formed in terms of this Act, the Public Health (Scotland) Acts shall in their application to such special district be amended to the extent that the maximum assessment leviable thereunder shall be diminished by the amount of the rate for the time being levied in terms of this Act, so that the maximum assessment aforesaid and the rate levied in terms of this Act taken together shall not in any year exceed the rate of two shillings and sixpence in the pound in any special water supply or drainage district.

(5) If in any year ending the fifteenth day of May the rates received by the district committee, as undertakers, shall be insufficient to defray the expenses of the maintenance, repair, management, and regulation of any authorised works, it shall be lawful for and incumbent on the county council to meet such deficiency by imposing and levying a rate in terms of this Act upon the special pier and harbour district within which the works are situate.

(6) If from any cause the local subscriptions received on account of any works, together with the grant out of moneys voted by Parliament, shall be insufficient to defray the cost of constructing the authorised works, the county council shall be bound to pay and provide for such deficiency, and for that purpose may borrow, on the security of a rate to be levied in terms of this Act upon the special pier and harbour district within which the works are situate, and such rate shall be chargeable with the principal and interest of the loan, the amount of such deficiency in the manner and subject to the provisions of section sixty-seven of the Local Government (Scotland) Act, 1889. 52 & 53 Vict. c. 50.

(7) Where a special district has been formed under the provisions of this Act, the district committee may, subject to the regulations to be from time to time made with the consent of the county council, appoint a sub-committee for the management and maintenance of the pier and harbour works, and such sub-committee shall, in whole or in part, consist of parish councillors of the parish or parishes in

Sec. 2. which the special district is situated, whether members of the district committee or not.

1. See notes to Sec. 44 (8) and note 3 to Sec. 44 (9) of the Local Government (Scotland) Act, 1894, p. 164.

Substitution of district for County Council for certain purposes.
54 & 55 Vict. c. 58.

3. Upon a special pier and harbour district being formed as in this Act herein-before provided the enactments contained in (*a*) section two, sub-sections one to twenty-four, inclusive, and sub-section twenty-seven and (*b*) the enactments of sections three and six of the Western Highlands and Islands (Scotland) Works Act, 1891, shall apply for the purpose of aiding in the construction and improvement of small harbours, piers, and boatslips within the counties of Orkney and Zetland as if the words "District Committee" were in the said Act inserted in place of the words "County Council."

Extension of 57 & 58 Vict. c. 58, s. 45, to special districts under this Act.

4. Section forty-five of the Local Government (Scotland) Act, 1894, shall be read as if the words "each special pier and harbour district formed under the Orkney and Zetland "Small Piers and Harbours Act" were therein inserted after the words "section forty-four of this Act."

Savings for 54 & 55 Vict. c. 58. 57 & 58 Vict. c. 58.

5. Nothing in this Act shall prejudice or affect the provisions of the Western Highlands and Islands (Scotland) Works Act, 1891, or the Local Government (Scotland) Act, 1894.

Extent of Act.

6. This Act shall apply only within the counties of Orkney and Zetland.

APPENDIX X.

ACCOUNTING AND AUDIT.

LOCAL GOVERNMENT (SCOTLAND) ACT, 1889.

[SECTIONS 68 TO 70.]

As applied to the Audit of Parish Council Accounts by Section 36 of the Local Government (Scotland) Act, 1894.

Audit of accounts of *parish* council.

"**68.**—(1) The accounts of the receipts and expenditure of a *parish* council . . . shall be made up and balanced to the fifteenth day of May[1] in every year in such form[2] and shall be completed and signed[3] by such person or officer and before such date as the *Board* shall from time to time prescribe.

"(2) The accounts of a *parish* council . . . shall be audited in manner hereinafter provided.[4]

1. The Parish Council books, including the Poorhouse books, must be closed on the same day, viz., 15th May. As a general rule, the audit should not take place until after the accounts are completed, signed, and deposited. In some of the larger parishes, however, it will be found convenient to proceed with the audit from time to time throughout the year.

2. The Board have prescribed forms of accounts for parishes and for poorhouses. For an exemplification of the Parish Council abstract of accounts and detailed information regarding audit, see Maxwell's Parish Council Finance, Accounting and Audit (Edinburgh: Wm. Green & Sons).

3. The abstract is to be completed and signed by the clerk or acting clerk of the Parish Council. In the event of it not being possible to procure the signature of the clerk, the chairman of the Parish Council should be asked to sign. Should the office of clerk be vacant at 15th May, provision must be made, by appointing an interim clerk or other person for the balancing of the books, the preparation of the abstract of accounts, and the conduct of the statutory preliminaries to the audit. The duty of preparing the abstract being laid on the clerk, he should see that the necessary particulars are duly furnished to him by the other officials of the Parish Council (if any) in possession of any of the accounting books. The duty of an Inspector of Poor who is not also clerk

Sec. 68. ceases with the transmission of the books to the clerk, except that the auditor may call upon him to give explanations in respect of any accounting matter for which he is responsible.

4. These provisions apply to all parishes whether assessed or not. In some parishes the Library Committee appointed in terms of the Public Libraries (Scotland) Act, 1887, submit their accounts for incorporation in the Parish Council accounts, but the audit provisions do not apply to the committee, and they are under no obligation to submit their accounts for audit.

Appointment of *parish* auditors.

"**69.** The *Board* shall from time to time appoint one or more fit persons (in this Act referred to as *parish* auditors) to audit the accounts of each *parish* council, . . . and may remove any *parish* auditor.[1]

"The *parish* council shall pay to a *parish* auditor such salary and allowances as shall from time to time be fixed by the *parish* council[2] subject to the approval of the *Board*.

"Subject to the regulations hereinafter contained, the *Board* may make, and when made may revoke and vary, rules for the guidance of *parish* auditors in the discharge of their duties: Provided that no such rules when made or varied shall be in force until they have lain for not less than one month on the table of both Houses of Parliament.[3]

1. See note 2 to sec. 36 of the Local Government Act, 1894.

2. See note 4 to sec. 36 of the Local Government Act, 1894, and scale of fees on p. 293.
It will be observed, however, that it is for the Parish Council to fix such a fee as the Board can approve. So far as the *county* auditor is concerned, sec. 17 (1) of the Local Government (Scotland) Act, 1908, provides that "The salary and allowances of a county auditor shall in case of dispute be fixed from time to time, on the application of either party, by the Secretary for Scotland, and his decision shall be final.

3. See also the Rules Publication Act, 1893, section 1 of which provides that at least forty days before making any rules, notice of the proposal to make the rules and of the place where copies may be obtained must be published in the *London Gazette*. During that period it is open to any public body interested to submit in writing any representations or suggestions, and the rule-making authority are required to take these into consideration before finally settling the rules. Sec. 2 provides in cases of urgency for rules coming into operation immediately as provisional rules.

Provisions for audit.

"**70.** The following regulations with respect to audit shall be observed; (that is to say,)

"(1) Before each audit the . . . clerk *of the parish council*[1] shall, after receiving from the *parish*

auditor the requisite appointment, give at least fourteen days' notice, in such manner[2] as shall be prescribed from time to time, of the time and place[3] at which the audit will be made, and of the deposit of accounts required by this section, and of the name and address of the *parish* auditor. Sec. 70.

1. Where no clerk is appointed the duty falls on the Inspector of Poor. (Sec. 19 (2) of the Local Government (Scotland) Act, 1894.)

2. See the extracts from the Board's circulars of 24th April, 1896, and 30th April, 1897, pp. 294 and 301. If notice is given by advertisement in a newspaper, only one insertion is necessary. For Board's form of advertisement, see p. 296. The clerk should be careful to comply strictly with the requirements of the statute in every respect, as his failure to do so may invalidate the audit.

3. Where the Parish Council wish it, and are prepared to pay the additional expense, the auditor should arrange to conduct the audit in the parish unless there are serious objections to such a course.

"(2) An abstract in duplicate of the accounts duly made up, balanced and signed as aforesaid, shall, together with all assessment books,[1] account books, deeds, contracts, accounts, vouchers, and receipts mentioned or referred to in such accounts,[1] be deposited[2] in the offices of the *parish* council and be open between the hours of eleven forenoon and three afternoon to the inspection of all ratepayers[3] within the *parish* . . . for seven clear days before the audit, and all such persons shall be at liberty to take copies of or extracts from the same, without any fee; and any officer of the *parish* council duly appointed in that behalf refusing to allow inspection thereof shall be liable to a penalty not exceeding five pounds.

1. The minute books must be deposited along with the other books and accounts.

2. The office of the Parish Council is the proper place to deposit the accounts for inspection. Circumstances have, however, arisen in which it has been found more convenient to have the books deposited elsewhere, and the Board saw no reason to interfere so long as the Parish Council and the ratepayers were satisfied. For form of certificate of deposit see p. 296. By sec. 17 (2) of the Local Government (Scotland) Act, 1908, the Secretary for Scotland is given power to prescribe rules modifying as regards County Councils the requirements of this sub-section as to the deposit of the abstract of accounts and other documents.

Sec. 70. 3. See definition of "ratepayer" in sec. 105 of the Local Government Act of 1889. The privilege of inspection is confined to *ratepayers*, but the Parish Council would be well advised not to refuse to allow any *inhabitant* of the parish to inspect the books.

"(3) For the purpose of any audit under this Act, every *parish* auditor may, by a demand in writing, require the production before him of all books, deeds, contracts, accounts, vouchers, receipts, and other documents and papers which he may deem necessary, and may require any person holding the same or accountable therefor to appear before him at any such audit, or any adjournment thereof, and to make and sign a declaration as to the correctness of the same; and if such person neglects or refuses so to appear, or to produce any such books, deeds, contracts, accounts, vouchers, receipts, documents, or papers, or to make or sign such declaration, he shall incur for every neglect or refusal a penalty not exceeding forty shillings; and if he falsely or corruptly makes or signs any such declaration knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted on persons guilty of perjury.

"(4) Any ratepayer[1] may make any objection to such accounts or any part thereof, and shall transmit the same and the grounds thereof in writing to the *parish* auditor, and a copy thereof to the officer concerned,[2] two clear days before the time[3] fixed for the audit, and any ratepayer may be present at the audit and may support any objection made as hereinbefore provided either by himself or by any other ratepayer.

1. See note 3 to sec. 70 (2).

2. An objecting ratepayer must send notice of his objection to the person concerned, *i.e.*, the person or persons who made the payment, not the persons to whom payment was made.

3. With regard to Parish Council accounts, the advertised time of audit refers not to the date upon which the audit must be completed but to the first day of audit, *i.e.*, the day upon which any objections made in terms of this sub-section should be heard by the auditor.

"(5) If it shall appear to any *parish* auditor acting in pursuance of this section that any payment is in

Sec. 70.

his opinion contrary to law and should be disallowed, or that any sum, which in his opinion ought to have been, is not brought into account by any person, whether such payment or failure to account has been made matter of objection or not, he shall by an interim report[1] under his hand report thereon to the *Board*, setting forth the grounds of his opinion as aforesaid; and the *Board* shall cause such interim report to be intimated to the objector, if any, and to the officer or other person affected thereby; and after due inquiry the *Board* shall decide all questions raised by such interim report, and shall disallow all illegal payments and surcharge the same on the person or persons them *or authorising them to* making[2] *be made*,[3] and shall allow all sums which ought to have been but have not been brought into account.

1. The auditor must make an interim report where a payment is in his opinion illegal. He has no discretionary power. For form of interim report see p. 304. It is the duty of the clerk to direct the attention of the Parish Council to any proposed expenditure which may be illegal or of doubtful legality. If in his official capacity he is called upon to make a payment which in his opinion is illegal, he should see that his views are duly recorded in the minutes, or, failing this, he should state his opinion in an official letter to the Parish Council.

2. The persons who sign and countersign the cheques are the persons who make the payment. *County Auditor of the County of Lanark* v. *Lambie and Others*. 7th June, 1905, 7 F. 1049; 42 S.L.R. 615; 13 S.L.T. 137; 12 Co. Co. Cases 10. It follows that if the payment is made in cash, the person having charge of the cash and who is authorised to intromit with it is the person making the payment. It was further held in the case cited, which had reference to the audit of County Council accounts, that as regarded the legality of the payments, the determination of the Secretary for Scotland was final and not open to review.

3. These words constitute the amendment effected by sec. 17 (3) of the Local Government (Scotland) Act, 1908, and an alternative is thus provided as to the persons liable to surcharge. In the view of the Board, the persons authorising the payments to be made are those who pass the accounts for payment, and the Board suggest that the names of such persons should be entered in the minutes. (Circular of 17th May, 1909.)

"(6) If the *Board* shall be of opinion that, although a disallowance or surcharge might be lawfully made, the subject-matter thereof was incurred under such

Sec. 70.

circumstances as to make it fair and equitable that the disallowance or surcharge should not be made, *they* may abstain from making the same.

"(7) Every sum determined by the *Board* under this Act to be due from any person shall be paid by such person to the *parish* council within fourteen days after such determination has been intimated to him, and if such sum is not so paid it shall be the duty of the *parish* auditor to recover the same, and the *parish* council shall reimburse him for his expenses, including a reasonable allowance for his time in so far as not recovered from the person surcharged.

"(8) Within fourteen days after the completion of the audit, or, as the case may be, after the *Board* has determined[1] any questions raised under an interim report by the *parish* auditor, the *parish* auditor shall report on the accounts audited, and shall certify[2] on each duplicate abstract thereof the amount in words at length of the expenditure so audited and allowed, and further that the regulations with respect to the accounts have been complied with, and that he has ascertained by the audit the correctness of the accounts. He shall forthwith send one duplicate abstract of the accounts hereinbefore mentioned to the *parish* council, who shall cause the same to be deposited in their office, and shall publish[3] such abstract in the form prescribed in some one or more of the newspapers circulating in the *parish*. The *parish* auditor shall also forthwith send the other duplicate abstract of the accounts so certified by him to the *Board;* provided that if the *Board* shall so determine, such abstract may come in place of and render unnecessary a return of the receipts and expenditure of the *parish* council in pursuance of the Local Taxation Returns (Scotland) Act, 1881.

44 & 45 Vict. c. 6.

1. When an interim report is lodged by the auditor, the accounts cannot be closed till such report is disposed of by the Board.

2. For form of certificate see p. 293. In exceptional circumstances the auditor may find it necessary to vary or modify this

certificate, but where possible, it should be adhered to. It covers the transactions of both the general parish fund and the special parish fund. The auditor must himself sign the certificate. **Sec. 70.**

3. The publication of the general abstract of the Parish Council accounts cannot be dispensed with. It is unnecessary, however, to publish an abstract of the accounts of a Poorhouse Combination.

"(9) Where any surcharge has been made as hereinbefore provided, or the *parish* auditor has made any interim report or report respecting the accounts or the receipts and expenses of the *parish* council, the council shall cause the surcharge and interim report or report to be printed and published,[1] together with the abstract of their accounts hereinbefore mentioned, and to be delivered to any ratepayer as in this section mentioned who asks for the same, and in case of default in such publication the *Board* may cause the same to be published, and the cost of such publication, to the amount certified by the *Board*, shall be a debt due from the *parish* council to Her Majesty, and the . . . *clerk of the parish council* shall be liable in case of default in such publication to a fine not exceeding twenty pounds."

1. It is not clear whether publication in the sense of this sub-section means publication "in some one of more of the newspapers circulating in the parish" (see sub-section 8). The Board, however, have been satisfied with the interim report and surcharge along with the abstract being merely printed and circulated among the ratepayers.

CIRCULARS, &c., OF THE BOARD OF SUPERVISION, THE LOCAL GOVERNMENT BOARD, AND THE SCOTTISH OFFICE RELATING TO PAROCHIAL ACCOUNTING.

INTER-PAROCHIAL ACCOUNTS AND PAYMENTS.

MINUTE OF BOARD OF SUPERVISION, MARCH 19, 1874.

In consequence of difficulties which have been experienced by Parochial Boards and Inspectors of Poor in checking and tracing payments made and remittances sent from one parish to another, the

Board hereby require all Inspectors in future to comply with the following instructions whenever they make payment of an account or remit money (whether by cheque or otherwise) to the Inspector of another parish:—

1. Every payment of account or remittance shall be accompanied by a letter, either in a separate or in the same enclosure, stating the amount paid or remitted, and the purpose or purposes to which it is to be applied.

2. When there are contra-accounts of adjusted and admitted claims between two parishes, and the one account is in whole or in part discharged by the other as a set off, this fact shall be stated in the letter required by the immediately preceding instruction.

3. Every Inspector shall keep an "Intimation of Payment" Book, with counterfoils attached, in the form prescribed by this minute; and whenever he makes payment or remittance, as above explained, he shall transmit by post an "Intimation of Payment" to the Chairman of the Parochial Board in the parish to which payment is made.

4. Every Inspector shall keep a "Receipt" Book, with counterfoils attached, in the form prescribed by this minute; and whenever he receives payment, as above explained, he shall grant a "Receipt" in said form.

FORM OF "INTIMATION OF PAYMENT" BOOK, referred to in Board's Minute of 19th March, 1874.

No. 1.*	No. 1.* (Date)_____
To Chairman of Parochial Board of_____	To Chairman of the Parochial Board of_____
(Date)_____	I hereby intimate that I have this
Intimated payment of £ : : to	day paid (or remitted) to the Inspector of
Inspector of_____	Poor of_____ the sum of £_____
Case of_____	being for payment of
(or)	
Balance due on contra accounts.	(Signature)_____
	Inspector of Poor of_____

* Each page of this book to be numbered consecutively as used.

Note.—This intimation is sent to the Chairman for comparison with Entry in Inspector's Cash Book, and subsequent information of Auditor.

FORM OF "RECEIPT" BOOK, referred to in Board's Minute of 19th March, 1874.

No. 1.*	No. 1.* (Date) _____
Receipt to Inspector of _____ for £ _____ on account of _____ _____ _____ (Date) _____	Received by me, Inspector of Poor of the Parish of _____, from the Inspector of Poor of the Parish of _____, the sum of £_____, being payment of _____ (Signature) _____ Inspector.

* Each page of this book to be numbered consecutively as used.

CIRCULAR AND REGULATIONS OF BOARD OF SUPERVISION,

November 24, 1875.

Sir, I am directed by the Board of Supervision to inform you that in future they will require, on the part of all Inspectors of Poor, the observance of the following regulations respecting Inter-Parochial Accounts:—

1. All such accounts shall be made up and rendered twice in each year at the least.

2. All such accounts shall be made up to the 30th April and 31st October, and rendered so that they may be received by the Inspectors to whom they are transmitted not later than the 5th May and 5th November respectively, provided always, that in parishes where the course of post requires it, the accounts shall be made up to the 14th April and 14th October, and rendered immediately thereafter, or to such other date between these periods and the 30th April and 31st October as may be necessary to enable the Inspectors to whom they are rendered to remit payment, in terms of these regulations.

3. All accounts so rendered shall be submitted by the Inspector (if he has not authority to pay them) to the Parochial Board or its Committee (as he may be instructed by his Parochial Board) within such time as will enable him to remit the amounts due before the 14th May and 14th November in each year.

4. If any sums are disbursed between the date to which the April account is made up and the 14th May in any year, a supplementary account relating thereto should be immediately rendered.

I am to explain that the objects which the Board has in view in framing the above regulations are to ensure regularity in the rendering of all Inter-Parochial Accounts, to diminish the labour of Parochial Boards and Inspectors in relation thereto, and to bring all payments and receipts (as far as possible) within the financial year to which they properly belong.—I am, &c.,

JOHN SKELTON, *Secretary.*

The Inspector of Poor.

Intimation to Chairmen of Payment of Accounts.

Board of Supervision, Edinburgh, November 22, 1877.

Sir,—I am directed by the Board of Supervision to recall your attention to the Board's Circular Letter of 25th March, 1874, respecting Inter-Parochial Accounts and Payments. (See Minute of 19th March, 1874, p. 283.)

A copy of that circular is appended to this communication.

It has come to the knowledge of the Board that in numerous instances Inspectors do not transmit "Intimation of Payment" to the Chairman of the Parochial Board direct as they are required by Instruction 3 to do, but either enclose it to the Inspector of the parish to which payment is made, or address it to the Chairman to the care of the Inspector. Such a course is a departure from the requirements of the Board, and is calculated to defeat the object of the "Intimation."

I am directed to intimate that the Board will be compelled in future to regard as a serious offence any failure to comply strictly with the requirements referred to.

The names and addresses of the Chairmen of Parochial Boards are printed in the* Parochial Directory of Scotland.

You will lay this communication before the next meeting of the Parochial Board.—I am, &c.,

John Skelton, *Secretary.*

The Inspector of Poor.

Note.—A copy of the above was sent to the Chairmen of Parochial Boards on 28th November, 1877.

* Now the "Local Government Directory for Scotland."

THE EDUCATION (SCOTLAND) ACTS, 1872 AND 1878.

Extract Minute of the Board of Supervision, 23rd July, 1879.

The Board hereby cancel their Minute of the 21st May, 1873, and substitute the following explanatory statement in lieu thereof:—

I. *School Rate.*—The 44th Section of the Education (Scotland) Act, 1872, makes provision for three distinct cases, in regard to each of which the assessment for school purposes is to be differently imposed.

(1) It first deals with the case where the district of the Parochial Board and the district of the School Board are identical; and in regard to such a case it enacts that the School Board of each parish and burgh shall certify to the Parochial Board or other authority, charged with the duty of levying the assessment for relief of the poor, the *amount of school fund* required to be provided by means of a rate. The Parochial Board are required to add the rate necessary to produce this fund, under the name of "school rate" to the assessment for relief of the poor, but separate from it, and to assess the same, one-half upon owners and the other half upon occupiers (when such is the mode of assessment in the parish), and

to collect and pay over the same to the School Board. In this case the School Board intimate to the Parochial Board the precise sum which they require to be collected, and it falls upon the Parochial Board to fix the rate which will produce the amount so demanded by the School Board. The duty rests with the Parochial Board of recovering the amount certified; and in fixing the rate to produce that sum, it must be kept in view (and provision should be made for this) that some portion of the assessment is generally irrecoverable.

(2) The second case provided for by the statute is where a school district includes two or more parishes, or parts of two or more parishes, having separate Parochial Boards. In this case the School Board does not intimate to the Parochial Boards any specific sum to be paid by each of them, but it certifies to each Parochial Board that a certain rate on each pound of rental, within the areas of the Parochial Boards, must be laid on and assessed as school rate and recovered by the Parochial Boards and paid over when recovered by them to the School Board. The duty of the Parochial Boards in this case is to recover the assessment according to the rate imposed, and if they do due diligence in endeavouring to recover the whole rate they will not be bound to make up to the School Board unrecovered arrears. They have no power to do more than to levy on each ratepayer the rate which they are told to levy. They cannot exact from paying ratepayers the arrears which they have been unable to recover from those in default. But they must show that they did due diligence. If this be not done it might be contended that Parochial Boards would then be held responsible for unrecovered arrears. In this class of cases the Parochial Boards ought at the end of every year to hold count and reckoning with the School Board, showing exactly the amount recovered, and they ought to obtain a discharge from the School Board to the effect that they had duly discharged their duty of levying, so far as practicable, the assessment.*

(3) The third class of cases referred to in the statute embraces the 71† parishes in Scotland where there is still no assessment for the poor, or where the assessment is not laid one-half on owners and the other half on occupiers. So far as regards this class, the Parochial Boards are charged with no duty in assessing or levying a school rate or fund. That duty is laid upon the School Board itself, which is authorised to assess for and to levy the school rate in the same manner as if it were poors' assessment, one-half upon owners and the other half upon occupiers.

(4) In regard to the assessments embraced in the foregoing classes 1 and 2, the money must be paid over to the School Board by the Parochial Board or Boards "without any deduction, on account of the cost of levying and collecting such sum or rate," in accordance with the enactment in the 32nd Section of the Education (Scotland) Act, 1878. The expense of collecting the rate under the third class will be borne by the School Board; and provision will be made for it by that Board in fixing the rate of assessment.

* The Board have expressed the opinion that the Parish Council must hand over the exact sum requisitioned by the School Board where a fixed sum has been named. Where the School Board request a rate at so much per £ to be levied, the Parish Council hand over the sum which that rate produces.

† There are now only four parties unassessed.

Account in which Cost of Collecting School Rate should be Entered.

Board of Supervision, Edinburgh, February 20, 1879.

Sir,—Inquiries having been addressed to the Board by Inspectors of Poor as to the account in which the cost of collecting school rate, in terms of the 44th section of the Education (Scotland) Act of 1872, and the 32nd section of the Education (Scotland) Act of 1878,* should be entered, I am directed to intimate that the expense incurred in collecting that rate is to be entered in the day cash book and general ledger under a separate head.—I am, &c.,

John Skelton, *Secretary.*

* Section 32 is as follows:—"When under section 44 of the principal Act a "Parochial Board is required by a School Board to levy, by means of a local rate, "any sum required to meet a deficiency in the school fund, or to levy an amount "of rate on each pound of rental as school rate, the Parochial Board shall pay over "to the School Board such sum, or the produce of such rate, as the case may be, "without any deduction on account of the cost of levying and collecting such sum "or rate."

Accounting.

Financial Business of Parochial Boards.

Board of Supervision, Edinburgh, May 10, 1880.

Sir,—I am directed by the Board to transmit, for the information of the Parochial Board, the subjoined recommendations respecting the system upon which the financial business of the parish ought to be conducted.

The Board are aware that in many parishes the present arrangements are perfectly satisfactory, and very much in accord with the recommendations under-written, and wherever such is the case this circular will not apply.

But it is in the knowledge of the Board that in some parishes no business-like system of safeguards exists, such as is universally adopted in the ordinary transactions of life where the receipt and expenditure of money are concerned; and the Board have observed that in almost every instance in which a Parochial Officer has become a defaulter, the circumstance has either arisen from, or has been facilitated by, the laxity of the Parochial Board's arrangements.

The Board would therefore recommend—

1. That every Inspector and Collector should be required to find satisfactory security to a reasonable amount for his intromissions;* and that the Bond of Security should be deposited with the Auditor, who should be instructed to report annually to the Parochial Board upon its sufficiency.

(*N.B.*—Every accounting officer in the public service of the Government is required to find security for his intromissions.)

2. That the Inspector's Day Cash Book, the Collector's Cash Book, and the Bank Pass Books should be submitted to the Parochial Board and the Managing and Finance Committees at each meeting.

3. That the purpose or purposes to which the proceeds of each cheque are to be applied should be entered on the counterfoil of the cheque, and endorsed on the cheque itself in some such manner as the following:—

Registered Poor (one week), - - - £
Other Parish Poor (Do.), - - -
Casual (estimate), - - - - -
Account to Parish of A, - - - -
(Initialed) A. B., *Inspr.*

You will submit this circular to the Parochial Board at its next meeting.—I am, &c.,

JOHN SKELTON, *Secretary.*

The Inspector of Poor.

* See Circular of 30th April, 1897, paragraph 16, on p. 302.

It is for the Parish Council to decide in whose custody Bonds of Security for intromissions of their officials should be placed, but the Board recommend that the Auditor should hold them. In any case they should be submitted to him for his information, and in order that he may advise the Parish Council as to their sufficiency. The premium on such Bonds may legally be paid by the Parish Council. Indeed in most cases it is safer for the Council to pay the premium, as they are then free from loss on account of the policy being allowed to lapse through non-payment of premium.

SUGGESTIONS BY THE LOCAL GOVERNMENT BOARD FOR SCOTLAND REGARDING AUDIT OF PARISH COUNCIL ACCOUNTS.

1. The Local Government Board desire to direct the attention of Parish Auditors to the duties generally which they may be reasonably expected to perform in the Audit of Parish Council Accounts.

2. It will be necessary for the Parish Auditor to make himself acquainted with the various statutes under which Parish Council Expenditure is incurred, and with the Rules and Instructions of the Board. The more important provisions of the Local Government Acts of 1889 and 1894 are included in the subjoined notes; a copy of the Circulars* regarding Poor Law Finance issued to Inspectors of Poor, revised up to date, are sent herewith.

3. The Accounts of the Parish Council and of the Landward Committee (together with all the books, vouchers, &c., required in the Audit) will be sent by the Clerk or Acting Clerk of the Council to the Auditor for examination, so that the Auditor may receive them as soon as may be after the 15th day of May, but not later than the first day of August. Before each Audit, the Auditor should

1894 Act, sec. 36 (4).

* The principal Circulars (or extracts from them) are included in this Appendix. For others, reference should be made to the Board's Rules, Instructions, and Recommendations to Parochial Authorities.

give at least twenty-eight days' notice in writing to the Clerk, or Acting Clerk, of his appointment, and of the time and place of Audit, to enable the Clerk, or Acting Clerk, to give the statutory fourteen days' notice to the ratepayers. The earliest day on which the Audit may be held is the 26th May; to hold it on that date would necessitate intimation being given by the Auditor by 28th April. The Auditor's intimation should in every case be given before 1st July, to permit of the Accounts being transmitted to him not later than 1st August.

1889 Act, sec. 70 (2).

4. Before the Audit, the Auditor will further receive from the Clerk, or Acting Clerk, of the Council a certificate, signed by the Clerk, or Acting Clerk, and countersigned by the Chairman of the Parish Council, "that an abstract, in duplicate, of the Accounts, duly made up and balanced to the 15th May, and signed" by the Clerk, or Acting Clerk, has, "together with all assessment books, account books, deeds, contracts, accounts, vouchers, and receipts mentioned or referred to in such Accounts, been deposited in the offices of the Parish Council, and been open between the hours of eleven forenoon and three afternoon to the inspection of all ratepayers within the Parish for seven clear days before the Audit; that all such persons have had liberty to take copies of, or extracts from the same, without any fee."

5. The same rules will apply to the Accounts of Combination Poorhouses. Such Accounts will be signed by the Treasurer to the Poorhouse Combination, and they will be open to inspection in the Chambers of the Poorhouse Treasurer.

6. Where the Clerk of the Landward Committee is not also Clerk, or Acting Clerk, of the Council, the Accounts will be signed by the Clerk of the Landward Committee, and transmitted by him to the Clerk, or Acting Clerk, of the Council, in order that they may be deposited for the inspection of ratepayers, and forwarded to the Auditor along with the Accounts of the Parish Council.

1889 Act, sec. 70 (1).

7. The Auditor will see that due notice, by advertisement,* at least fourteen days before the date of deposit of the Accounts, has been given to the ratepayers of such deposit of the Accounts, and of the time and place of Audit, and of the name and address of the Parish Auditor.

Sec. 70 (4).

8. It is within the right of any ratepayer to take exception to the Accounts, and the Auditor shall receive any objection to the Accounts, or part of the Accounts, or to any vouchers or authority for the same, made in writing to him by any ratepayer, not less than two clear days before the time fixed for the Audit.

9. The Audit will be conducted in the Auditor's chambers (or, if more convenient and no additional expense is involved, in the Parish Chambers). A visit by the Auditor to a Parish need not be made unless (1) he thinks it necessary for an efficient Audit; or unless (2) he is required to do so by the Local Government Board.

10. The Auditor will, of course, see that the Abstract of Accounts is made up in the form prescribed by the Board; that the particular items of Receipt and Expenditure are stated in sufficient detail; that all sums received, or which ought to have been received, are brought

* Or by placard, see p. 296

into the Accounts; that all payments are made under proper authority and duly vouched by adequate vouchers. Every voucher produced to the Auditor should be so marked by him that it cannot be produced to him again without immediate detection. He should compute the Accounts so as to ascertain the accuracy thereof, and the balance due to or from the officer rendering the same.

11. In auditing Poorhouse Accounts, the Auditor should further see that all provisions, clothing, and other articles received, are clearly shown in the books, and their disposal properly accounted for; that stock has been taken as at 15th May, and duly certified by the proper person or authority; and that inventories of Poorhouse furnishings, &c., have been made out, duly checked, and certified by the proper person or authority.

12. The Auditor shall take care that the Parish Books of Account, including Poorhouse Books, are closed on the same day, viz., the 15th May. Sec. 68 (1).

13. The accounts of all trusts vested in, or managed by, the Parish Council should be audited by the Auditor. These accounts will be kept separate from the Accounts of the Parish Council.

14. Where the Parish Council have property from which a revenue is derivable, the Auditor will report whether, in his opinion, the investment of, or security for, the fund is sound and proper in the circumstances, and whether a fair and reasonable income is derived therefrom.

15. Wherever, from the appearance of the Vouchers or any other cause, there is reason to doubt the regularity of any transaction, the matter should be carefully investigated by the Auditor, who will, if necessary, report the result of his investigation to the Board.

16. As a general rule, before making such Report, an opportunity should be given to the officer, or person, or persons concerned to afford an explanation of the matter. Cases, however, may occasionally occur in which it may be advisable to communicate with the Board in the first instance.

17. If there has been any payment which, according to the Auditor's opinion, is not authorised by law, and should be disallowed, or any sum which, in his opinion, ought to have been, but has not been brought into the Accounts, whether such payment or failure to account has been made matter of objection or not, he shall, by an interim Report under his hand, report thereon to the Board, setting forth the grounds of his opinion. In every case the name and address of the person or persons regarding whom an interim Report* is made should be stated. Sec. 70 (5).

18. The Auditor will state whether in his opinion the irregularities referred to in his interim Report are due to the negligence, misconduct, or error of judgment of the person or persons responsible therefor.

19. Where an item of expenditure appears to him to be illegal, or to be in any way open to observation, the Auditor will investigate the circumstances, and, if satisfied that a charge has been unduly made, will report to the Board, stating the amount by which, in his opinion, the undue charges should be reduced.

* For form of *interim* Report, see p 304.

20. The Auditor, however, will assume that payment of aliment to a pauper by a Parish Council has been properly made, if sufficiently vouched, and if no objection is taken thereto. If, however, a ratepayer challenges a payment as illegal, and lodges an objection in terms of the Act, or if, on the face of the Accounts, or from the Report of an officer of the Local Government Board, any such payment appears to call for further inquiry, it will be the duty of the Auditor to make further inquiry, and, if necessary, report upon the matter to the Local Government Board. If the question raised be one which deals with the amount of the aliment, the Auditor should not interfere unless the amount is so large as to suggest that it was made *in mala fide*.

21. Expenditure incurred in attending Parish Council or Parish Council Committee Meetings within the Parish ought not to be charged against the rates; but when a Parish Councillor is obliged to travel outside the Parish on duty which is not necessarily involved in his acceptance of the office of Parish Councillor, his outlay for reasonable travelling expenses, duly vouched, may be legitimately charged. Such outlays will include the travelling expenses of any Councillor who represents the Parish Council on the Committee of a Poorhouse outwith the Parish. The Auditor should report to the Board when there appears to be travelling in excess of what is necessary for efficient administration.

Sec. 70 (3). 22. "The Auditor may, by a demand in writing, require the production before him of all books, deeds, contracts, accounts, vouchers, receipts, and other documents and papers which he may deem necessary, and may require any person holding the same, or accountable therefor, to appear before him at any such Audit or any adjournment thereof, and to make and sign a declaration as to the correctness of the same."

23. Where a surcharge has been made by the Board, the person surcharged is bound to make payment of the account within fourteen days after intimation has been made to him, "and if the sum is not so paid it shall be the duty of the Parish Auditor to recover
Sec. 70 (7). the same, and the Parish Council shall reimburse him for his expenses, including a reasonable allowance for his time in so far as not recovered from the person surcharged."

Sec. 70 (8). 24. "Within fourteen days after the completion of the Audit of the Accounts of any Parish, or, as the case may be, after the Board have determined any questions raised under an interim Report by him, the Auditor shall report on the Accounts audited, and shall certify on each Duplicate Abstract thereof the amount in words at length of the expenditure so audited and allowed, and, further, that the regulations with respect to the Accounts have been complied with, and that he has ascertained by the Audit the correctness of the Accounts." He shall then send one Duplicate Abstract of the Accounts to the Parish Council, and the other Duplicate Abstract, duly certified by him, to the Local Government Board. Appended is a form of certificate to be used by the Parish Auditor.

MALCOLM M'NEILL, *Secretary.*

Local Government Board,
Edinburgh, April 24, 1896.

AUDITOR'S CERTIFICATE.

I hereby certify that I have compared the entries in this Abstract of Accounts with the vouchers and other documents relating thereto, that the payments have been made under proper authority, and that the regulations with respect to the Accounts have been duly complied with.

I hereby further certify that I have ascertained by Audit the correctness of the Abstract, and that the expenditure out of the General Parish Fund during the year ended on the 15th May, 19 , included in such Abstract, and allowed by me at the Audit, is (*insert amount in words at length*), of which there appears in the Current Accounts
and in the Capital Accounts
and that the Expenditure out of the Special Parish Fund during the year ended on the 15th May, 19 , included in such Abstract, and allowed by me at the Audit, is
of which there appears in the Current Account
and in the Capital Account

ORDER OF THE LOCAL GOVERNMENT BOARD FOR SCOTLAND

PRESCRIBING A SCALE FOR THE REMUNERATION OF AUDITORS OF THE ACCOUNTS OF PARISH COUNCILS.

LOCAL GOVERNMENT (SCOTLAND) ACT, 1894.

Whereas it is provided by Section 36 (3) of the Local Government (Scotland) Act, 1894, that the Local Government Board for Scotland may prescribe a Scale for the remuneration of Auditors in respect of their duties under that Section;

And Whereas it is expedient that a Scale for the remuneration of Auditors of Parish Council Accounts should be prescribed;

Now Therefore We, the Local Government Board for Scotland, by virtue of the powers vested in us as aforesaid, do hereby prescribe the Scale set forth in the Schedule hereto as the Scale for the remuneration of Auditors appointed under the said Section, subject to the conditions and reservations following, viz.:—

1. The prescribed Scale shall apply to the Audit of the Accounts of the year ending 15th May, 1897, and shall continue in force until revoked or altered.
2. For the purpose of ascertaining the expenditure on which the fee according to the Scale is to be calculated, Assessments which are collected by the Parish Council and handed over

to another Authority (such as the School rate and Valuation rate) shall not be taken into account.

3. The prescribed Scale shall not apply (1) to Poorhouse Accounts, and (2) to unassessed Parishes. The Board have not thought it necessary to carry the Scale beyond an expenditure of £5000, and they further reserve power to allow a special additional fee where it appears that from any cause the Audit has been exceptionally onerous.
4. In addition to the fee prescribed, the Auditor shall be entitled to repayment of any outlays necessarily incurred in connection with the Audit.
5. The prescribed Scale shall apply to the annual Audit only, and shall be exclusive of remuneration for any other or more frequent Audit that may be arranged.

SCHEDULE.

Where the Expenditure of the Parish Council is			The Auditor's Fee shall not exceed		
	Under	£20	£1	1	0
£20 and	under	£50	1	11	6
50	,,	100	2	2	0
100	,,	200	2	12	6
200	,,	300	3	3	0
300	,,	600	4	4	0
600	,,	900	5	5	0
900	,,	1200	6	6	0
1200	,,	1600	7	7	0
1600	,,	2000	8	8	0
2000	,,	2500	9	9	0
2500	,,	3000	10	10	0
3000	,,	4000	11	11	0
4000	,,	5000	12	12	0

Given under the Seal of Office of the Local Government Board for Scotland, this Eighth day of April, One Thousand Eight Hundred and Ninety-seven years.

BALFOUR OF BURLEIGH,
President.

MALCOLM M'NEILL,
Secretary.

EXTRACTS FROM CIRCULAR FROM LOCAL GOVERNMENT BOARD FOR SCOTLAND TO CLERKS TO PARISH COUNCILS, DATED 24TH APRIL, 1896.

The books of Account of the Parish Council will be closed, and the Abstract of Accounts made up as at 15th May. Inter-Parochial Accounts will be made up as formerly to the 30th of April and 31st October, and rendered so that they may be received

by Inspectors of Poor to whom they are transmitted not later than 5th May and 5th November respectively, in time for the sums due being remitted before the closing of the books—in terms of the Board of Supervision Circular dated 24th November, 1875.

In every case of Inter-Parochial payment, intimation will continue to be made by the Inspector of Poor making the payment to the Chairman of the Council receiving the same. These intimations should be carefully preserved by the Chairman of the Council, and sent by him direct to the Auditor before the Audit.

The Accounts, together with the Books and all other documents necessary for the Audit, should be transmitted as soon as possible after the 15th day of May, and in ordinary circumstances not later than the 1st day of July.* The deposit of the Accounts, &c., for the inspection of ratepayers will, however, take place before they are transmitted to the Auditor.

The first date on which the Accounts, &c., are deposited for the inspection of ratepayers must be at least nine clear days (exclusive of Sundays) before the date of audit. This is necessary in order that the accounts may be open for seven clear days (excluding Sundays), and that any ratepayer taking exception to the accounts on the last day of deposit may have time to lodge his objection in terms of Sec. 70 (4) of the principal Act.

The Clerk of the Landward Committee will transmit the Accounts of the Landward Committee, duly completed and signed, to the Clerk, or Acting Clerk, of the Parish Council, to be deposited for the inspection of the ratepayers and forwarded to the Auditor along with the Accounts of the Parish Council.

Where the Clerk, or Acting Clerk, of the Council is not Inspector of Poor, the latter shall transmit his Cash Books and all other books and documents having reference to the financial affairs of the Parish Council, to the Clerk of the Parish Council, to be deposited for the inspection of the ratepayers and forwarded to the Auditor along with the Accounts of the Parish Council.

Where the Clerk, or Acting Clerk, of the Parish Council is not also Collector of Rates, the latter shall transmit his Cash Books and all other books and documents having reference to the financial affairs of the Parish Council, to the Clerk of the Parish Council, to be deposited for the inspection of the ratepayers and forwarded to the Auditor along with the Accounts of the Parish Council.

The Governor of a Poorhouse, not being a Combination Poorhouse, shall transmit to the Clerk, or Acting Clerk, of the Parish Council all Cash Books, Stock Books, Vouchers and other documents having reference to the financial affairs of the Poorhouse together with a certificate of stock taken as at 15th May, and duly certified by the proper person or authority, to be deposited for the inspection of the ratepayers and forwarded to the Auditor along with the Accounts of the Parish Council.

The Auditor will give at least twenty-eight days' notice in writing to the Clerk, or Acting Clerk, of the time and place of the Audit of the Accounts of the Parish. The Audit will be conducted in the Auditor's chambers, or, if more convenient, and if no additional expense is involved, in the Parish Chambers.

On receiving such notice from the Parish Auditor, it will be the duty of the Clerk, or Acting Clerk, to give at least fourteen days'

* See also paragraph 6, p. 301.

notice to the ratepayers, by advertisement§ in one or more of the newspapers circulating in the Parish, in the following form:—

.....*Parish Council.*

Notice is hereby given that an Abstract, in duplicate, of Accounts of the Parish Council for the year ended 15th May, 189 , duly balanced and signed, together with all assessment books, account books, deeds, contracts, accounts, vouchers, and receipts mentioned or referred to in such Accounts, will be deposited in the offices of the Parish Council and be open between the hours of 11 forenoon and 3 afternoon to the inspection of all ratepayers within the Parish from the day of to the day of inclusive, and all such persons shall be at liberty to take copies of or extracts from the same without fee.

Notice is also given that any ratepayer may make any objection to such Accounts or any part thereof, and shall transmit the same and the grounds thereof in writing to the Parish Auditor, and a copy thereof to the officer, or person or persons concerned, two clear days before the time fixed for the Audit, and any ratepayer may be present at the Audit and may support any objection made as hereinbefore provided either by himself or by any other ratepayer.

Mr.*
has been appointed the Parish Auditor.
The Audit will take place at† on‡
at o'clock. (Signature)
Clerk of the Parish Council.

Dated

Before each Audit the Clerk, or Acting Clerk, shall furnish the Auditor with a certificate in the following form, signed by the Clerk, or Acting Clerk, and countersigned by the Chairman of the Parish Council:—

We hereby certify that an Abstract, in duplicate, of the Parish Council Accounts, duly made up, balanced, and signed, has, together with all assessment books, account books, deeds, contracts, accounts, vouchers, and receipts mentioned or referred to in such Accounts, been deposited in the offices of the Parish Council and been open between the hours of 11 forenoon and 3 afternoon to the inspection of all ratepayers within the Parish from the day of to the day of inclusive, and that all such persons have been at liberty to take copies of or extracts from the same, without any fee.

(Signature)
Clerk of the Parish Council.
(Signature)
Chairman of the Parish Council.

Dated

§ Or by placard.

* Insert full name and address. † Insert place of audit.
‡ Insert date of audit.

It is the duty of the Parish Council to appoint one of their officers to be present during the time that the books and accounts are open for the inspection of the ratepayers. The officer appointed will give every reasonable facility to enable the ratepayers to examine the books and accounts and to make abstracts.

The Auditor will audit the accounts of all Trusts vested in or managed by the Parish Council. These accounts must be kept separate from the Accounts of the Parish Council. All books and documents in connection with them will, of course, be open to inspection at the same time as the other books and documents of the Parish Council.

With regard to the publication of the Abstract of Accounts in the newspapers in terms of Section 70 (8) of the Act of 1889, it will be sufficient if a General Abstract of Receipts and Expenditure, as shown in the model form of accounts issued by the Board, followed by a Statement of the Loans, Sinking Fund, Valuation and Rates of Assessment, be published.

ORDER OF THE LOCAL GOVERNMENT BOARD FOR SCOTLAND, DATED 21ST APRIL, 1896, PRESCRIBING THE METHOD IN WHICH VARIOUS MATTERS AFFECTING THE ABSTRACT OF ACCOUNTS ARE TO BE CARRIED OUT.

To the Parish Council of every Parish in Scotland,

To Landward Committees of Parish Councils,

To the Parish Auditors for the time being authorised to audit the Accounts of Parish Councils,

And to all others whom it may concern—

Whereas it is provided by Section 68 (1) of the Local Government (Scotland) Act, 1889, that "the accounts of the receipts and expenditure of a county council . . . shall be made up and balanced to the fifteenth day of May in every year, in such form, and shall be completed and signed by such person or officer and before such date as the Secretary for Scotland shall from time to time prescribe."

And whereas it is provided by Section 36 of the Local Government (Scotland) Act, 1894, that "the provisions contained in Sections 68 to 70 inclusive of the principal Act with respect to the making up and auditing of the accounts of a county council shall, with the substitution of 'parish council' for 'county council,' and 'clerk of the parish council' for 'county clerk,' and 'parish' for 'county' or 'burgh,' and 'the Board' for 'the Secretary for Scotland,' apply to the making up and auditing of the accounts of a parish council including those of a landward committee."

Now Therefore, We the Local Government Board for Scotland, in pursuance of the powers conferred upon us by these Statutes, do hereby prescribe as follows:—

(1.) (*Art.* (1) *is revoked by the Board's Order of 4th May,* 1905.)

(2.) That the abstract shall be completed and signed by the clerk, or acting clerk of the parish council.

(3.) That the abstract shall be completed and signed by the clerk, or acting clerk, of the parish council before the first day of July in each year; and

(4.) That the abstract of accounts of the landward committee shall be completed and signed by the clerk, or acting clerk, of the landward committee before the first day of July in each year.

Given under the Seal of Office of the Local Government Board for Scotland this Twenty-first day of April, One thousand eight hundred and ninety-six.

JOHN SKELTON, *Vice-President.*
MALCOLM M'NEILL, *Secretary.*

EXTRACTS FROM CIRCULAR OF THE LOCAL GOVERNMENT BOARD FOR SCOTLAND TO TREASURERS OF POORHOUSE COMBINATIONS, DATED 24TH APRIL, 1896.

The Abstract of Accounts of the Poorhouse Combination will be completed and signed by the Treasurer to the Combination before the 1st day of July in each year, and will, together with the Accounts, Books, and all other documents necessary for the Audit—including a certificate showing the stock on hand at 15th May, duly signed by the proper person or authority—be transmitted as soon as possible after the 15th day of May, and in ordinary circumstances not later than the 1st day of July.† The deposit of the Accounts, &c., for the inspection of ratepayers will, however, take place before they are transmitted to the Auditor.

The first date on which the Accounts, &c., are deposited for the inspection of ratepayers must be at least nine clear days (exclusive of Sundays) before the date of Audit. This is necessary in order that the accounts may be open for seven clear days (excluding Sundays), and that any ratepayer taking exception to the Accounts on the last day of deposit may have time to lodge his objection in terms of Section 70 (4) of the Act.

The Auditor will give at least twenty-eight days' notice in writing to the Treasurer of the time and place of the Audit of the Accounts of the Poorhouse Combination. The Audit will be conducted in the Auditor's chambers, or, if more convenient, and if no additional expense is involved, in the chambers of the Poorhouse Treasurer.

On receiving such notice from the Auditor, it will be the duty of the Treasurer to give at least fourteen days' notice to the ratepayers by advertisement* in one or more of the newspapers circulating in the District, in the form similar to that prescribed for Parish Council Accounts (see p. 296), with the necessary adaptations.

It is the duty of the Poorhouse Committee to appoint one of their officers to be present during the time that the books and accounts are open for the inspection of the ratepayers. The officer appointed will give every reasonable facility to enable the ratepayers to examine the books and accounts and to make abstracts.

† See also paragraph 3, p. 289.
* Or by placard, see 296.

Circular to Inspectors of Poor as to Exemptions from Assessment.

Audit of Parish Council Accounts.

Exemptions from Assessment.

Local Government Board,
Edinburgh, 28th October, 1896.

Sir,—I am to inform you that the attention of the Board having been directed to certain exemptions from assessment not in terms of law, which some Parish Councils have been in use to allow, they consider it necessary to issue the present circular.

1. It may be said generally that the owners and occupiers of all lands and heritages in Scotland entered in the Valuation Roll are liable to be assessed for relief of the poor in respect of such lands and heritages. The exceptions are few and unimportant.

2. It is not necessary that lands and heritages should be actually let to make the *owner* liable for his share of the assessment. An owner cannot be exempted on the ground that his property is unlet. Unlet shootings and deer forests, indeed, were not included in the original Valuation Act among assessable subjects; but they are now assessable under the Act 49 Vict. cap. 15.

3. By the Poor Law Act of 1845 power was given to the Parochial Board to exempt from payment of the assessment on the ground of inability to pay. This exemption applies of course mainly to tenants and occupiers; but cases may occasionally occur where an owner is unable to pay.

4. There are other exceptions, however, to the general rule of liability—exceptions based upon usage or general rule of law, or arising out of the provisions of Acts of Parliament.

5. The minister of the parish is not liable for assessment in respect of his manse and glebe; but when the glebe is not in the occupation of the minister, but is let by him to another, the occupier is liable to be assessed in respect of occupancy. When the glebe is feued under the provisions of the Glebe Lands Act, 1866, it becomes an assessable subject. The exemption of the minister from assessment applies to Poor Rates only.

6. Lands and heritages occupied by the Crown, or by the servants of the Crown for the purposes of the Crown, are not liable to be assessed. The exemption has been held to extend to property occupied for the purposes of the Army and Navy, the Post Office, the Police, and Prisons. But the Treasury is in use to contribute in aid of local rates in respect of Crown property or property used for "the public government of the country," in terms of a Memorandum submitted to Parliament in 1874.

7. The exemptions under Acts of Parliament include the following:—

(*a*) *Mines and Quarries* which have not been worked during some part of the year preceding the day on which the

assessment is ordered to be levied are exempt by the Poor Law Act of 1845;

(*b*) *Churches, Chapels, Meeting Houses, and "Premises exclusively appropriated to Public Religious Worship"* are not assessable (37 & 38 Vict. cap. 20); and it is further provided in the Act that the exemption shall continue although the building, or part of it, may be used for Sunday or Infant Schools, or for the charitable education of the poor;

(*c*) *Burial Grounds* are exempt from assessment under the same Act;

(*d*) *Sunday and Ragged Schools* may be exempted from occupier's rates under 32 & 33 Vict. cap. 40;

(*e*) *Societies established exclusively for purposes of Science, Literature, or the Fine Arts* are exempt from assessment, either as occupiers or owners, in respect of the land and buildings used by them for the transaction of their business, and for carrying into effect their purposes, provided that they are supported in whole or part by annual voluntary contributions, that they do not, and by their laws, may not make any dividend, gift, division, or bonus in money, to their members, and that they obtain a certificate in terms of the Act 6 & 7 Vict. cap. 36;

(*f*) *Militia Stores* are exempt under 17 & 18 Vict. cap. 106;

(*g*) *Volunteer Stores* under 26 & 27 Vict. cap. 65; and

(*h*) *Lighthouses* under 57 & 58 Vict. cap. 60.

8. It appears, however, from communications addressed to the Board, that the following are not infrequently included in the exemptions allowed by Parish Councils:—

Schools and Schoolhouses;
School Playgrounds;
Industrial Schools;
Charitable Institutions;
Hospitals;
Lunatic Asylums;
Parish Council Offices and Houses;
Poorhouses;

as well as the owners' rate in the case of unlet property.

The Board have to point out that these exemptions are not in terms of law, unless in cases of inability to pay, and they have to intimate that it is the duty of the local Boards, who are responsible for the recovery of the assessments, to see that the owners and occupiers legally liable are duly assessed.

9. The Board have, in conclusion, to remind Parish Councils that the Valuation Roll, as finally adjusted in terms of the Act, is conclusive as to *value*.

10. This circular is transmitted in triplicate, one copy being for the information of the Chairman of the Parish Council, another for

the guidance of the Collector of the Parish Rates, and the third for your use and that of the Parish Council generally.

I am, Sir,

Your obedient Servant,

MALCOLM M'NEILL,
Secretary.

The Inspector of Poor.

EXTRACTS FROM CIRCULARS OF THE LOCAL GOVERNMENT BOARD FOR SCOTLAND TO CLERKS TO PARISH COUNCILS, DATED 30TH APRIL, 1897.

4. Clerks of Parish Councils must be very careful to give at least fourteen clear days' notice of the Deposit of the Accounts (either by advertisement or by placards,* posted in conspicuous places as the Parish Council may decide), of the time and place of Audit, and of the name and address of the Parish Auditor, in the form prescribed by the Board and set forth in their Circular to Clerks of Parish Councils, dated 24th April, 1896.

5. Where such notice is given by placards, the Clerk of the Parish Council should transmit to the Auditor a duplicate copy, certified by the Chairman or other Member of the Parish Council, with a statement of the places where the placards have been exhibited. The Clerk of the Parish Council will further certify to the Auditor the date when the placard was first publicly exhibited for the information of the ratepayers.

6. The Abstract of Accounts, duly signed by the Clerk of the Parish Council, must be transmitted to the Auditor not later than 1st August. This instruction is statutory; but only in very exceptional cases will there be any reason why the transmission of the Books should be delayed to the 1st of August, and the Board have to point out that, until the Books and Vouchers are returned by the Auditor, after having been examined by him, Claims cannot be made on the Medical Relief and Pauper Lunacy Grants. As it is considered by the Secretary for Scotland and the Board to be of great importance that these Grants should be distributed as early as possible, the Board request that the Abstract of Accounts be completed and signed by the Clerk of the Parish Council as soon as may be after 15th May, and, after due notice, deposited for inspection of the ratepayers, and transmitted to the Auditor. Any undue delay on the part of a Parish Clerk or other official in transmitting to the Auditor the Abstract and relative Accounts, or in furnishing Books or Vouchers or necessary explanations required by the Auditor, will be regarded by the Board as a serious neglect of duty.

7. The following books should be transmitted to the Auditor together with the Accounts and Vouchers required, viz.:—Minute

*Placards for the purpose may be had from Messrs. Morrison & Gibb, Ltd., Printers to His Majesty's Stationery Office, Queen Street, Edinburgh.

Books, Day Cash Book, Bank Books, Ledger, Record of Applications, General Register, Pay Roll, Other Parish Poor Pay Roll, Suspense Poor Pay Roll, Medical Officers' Extra Diet Orders, Valuation Roll, and Assessment Roll.

8. Care must be taken that, in terms of the Act, the Abstract of Accounts in the form prescribed be published, after the completion of the Audit, in one or more of the newspapers circulating in the Parish.

11. Parish Councils should exercise complete control over the payments made by their Officers. Every payment should be authorised by the Parish Council (or its Finance Committee), or submitted to them for approval, and, if passed, initialed by the Chairman of the Meeting; and payments so authorised or approved should be entered in the Minute Book.

12. All payments should, as far as possible, be made by Cheque, signed by two members of the Parish Council, and countersigned by the Clerk.

13. Every cash transaction under the Poor Law, Registration, Valuation, Education, and Burial Grounds Acts, should be passed through the Day Cash Book and posted into the General Parish Ledger, under such heads that the Abstract of Accounts, in the form prescribed by the Board, may be readily prepared. Where a Special Parish Rate is levied a separate set of Books will be kept for that rate. The instruction contained in the last paragraph of the Circular of the Board of Supervision, dated 8th November, 1855, prohibiting Inspectors of Poor from entering in the Poor Law Books of account any sums received or expended under the Registration, Valuation, and Burial Ground Acts is hereby withdrawn.

14. Expenses under the Registration Act cannot legally be defrayed out of the Poor Rate—a separate Assessment must be levied and specially accounted for in the General Ledger.

15. A Statutory Audit does not relieve the Parish Council of the duty of supervising the Accounts, which should be carefully examined by the Parish Council or its Committee from time to time during the year. But an examination should not be made at a date which will delay or interfere with the Deposit of Accounts and their transmission to the Auditor.

16. It is incumbent on a Parish Council to see that the Ratepayers are protected from loss on account of default of any of their accounting officers by satisfactory and sufficient guarantees for their intromissions, and some experience which the Board have recently had leads them to call the attention of Parish Councils to the necessity for assuring themselves of the validity and sufficiency of the bonds or securities taken by their predecessors. It is, further, their duty to take care that such guarantees are properly maintained.

17. The Board have determined that the following persons are responsible for Parish Council payments, and, in the event of any illegal payments, they will be liable to be surcharged,* viz.:—

(*a*) Where payment is made by cheque, the persons who signed and countersigned the cheque.

* See, however, note 3 to Sec 70 (5) of the Local Government (Scotland) Act, 1889, p. 281.

(*b*) Where payment is made in cash, the Clerk or Inspector of Poor or other person who made the payment.

18. Two copies of this Circular are sent to you—one for your use and that of the Parish Council and the other for the use of the Chairman of the Parish Council, to whom I have to request you to hand it.—I am, &c.,

MALCOLM M'NEILL, *Secretary.*

To the Clerk, or Acting Clerk, of the Parish Council of

CIRCULAR TO PARISH AUDITORS ENCLOSING COPY OF ABOVE CIRCULAR TO CLERKS OF PARISH COUNCILS.

Local Government Board, Edinburgh, April 30, 1897.

Sir,—I enclose for your information copy of a circular of this day's date to Clerks of Parish Councils.

I have to direct your particular attention to paragraph 6 of the circular, which shows the need for the rapid completion of the Audit, and to request that you will give priority to that duty, and report to the Board any delay or neglect on the part of a Parish Official which retards its completion. When the Parish Books and Vouchers have been examined, they should at once be retransmitted to the Clerk of the Parish Council, unless there is some special reason for retaining them.

The Board see no reason why, in ordinary circumstances, the Audits in all Parishes should not be finished by the 31st of August, and I am directed to request that on that date you will report to the Board the names of the Parishes in your District, if any, where this is not the case, with the cause of delay in each.

You will observe that intimation of Deposit of Accounts may in future be made either by advertisement or by placard. Where the latter method is adopted you will obtain a duplicate of the placard, certified by the Chairman or other Member of the Parish Council, and a statement of the places where it has been exhibited. You will further obtain from the Clerk of the Parish Council a certificate of the date on which the placard was first publicly exhibited.

The books specified in paragraph 7 of the accompanying circular must be carefully examined by you in the course of the Parish Council Audit.

In auditing Poorhouse Accounts it is necessary, in addition to the examination of the usual Accounting Books, "to see that all provisions, clothing, and other articles received are clearly shown in the books, and their disposal properly accounted for" (see No. 11 of "Suggestions"). This involves an inspection of the Clothing and Provision Receipt Books, of the Contractors' Books, and other books recording the various articles received in the Poorhouse, and of the several books kept by the Governor or other Poorhouse

Officials showing the issue of the clothing, provisions, and other goods during the year. It further necessitates a careful examination of the Governor's Daily Diet Book, the Governor's Sick Diet Book, and the Medical Officer's Sick Diet Book, to ascertain that the provisions, cordials, &c., are duly accounted for. Tradesmen's Invoices of Goods delivered in the Poorhouse, and records of receipts from sale of articles produced by labour of the inmates, and from sale of waste and refuse, will also, of course, be examined by you.

You will see that the diet table is in accordance with the scale approved by the Board. This will be furnished by the Governor on application.

When any payment appearing in the accounts is, in your opinion, contrary to law, and presumably, therefore, one which should be disallowed, an "Interim Report" must be made. It is, however, no part of an Auditor's duty to express any opinion as to whether a surcharge should be enforced. The Board alone may decide that. As the Interim Report may have to be published along with the Abstract of Accounts, it is of importance that it should be clear and concise, and the Board would suggest that it should run somewhat in the following terms:—

Interim Report on the Accounts of the Parish Council of

The Auditor begs to report that a payment (or payments) amounting to pounds shillings and pence has been made out of the [*Poor Fund or Registration Rate, or other fund, as the case may be*] in respect of [*State subject of payment*].

The Auditor is of opinion that such expenditure is contrary to law. The grounds of the Auditor's opinion are [*State grounds of opinion*].

Payment was made by cheque, signed by Mr. [*State full name and address*], Parish Councillor, and Mr. [*State full name and address*], Parish Councillor, and countersigned by Mr. [*State full name and address*], Clerk of the Parish Council (or Clerk of the Landward Committee); [or payment was made in cash by Mr. [*State full name and address*], Clerk of the Parish Council (or other person by whom payment was made)].

Parish Auditor.

Date.

You should further state in a letter accompanying the "Interim Report" (1) the circumstances under which the expenditure was incurred, and (2) whether the irregularity was due to "negligence, misconduct, or error of judgment of the person or persons responsible."

An "Interim Report" will also be made by you where there is any irregularity involving a loss to the Parish Council, or where any sum, which ought to have been, has not been brought into the accounts.

For further particulars I have to refer you to the "Suggestions" issued to Auditors on 24th April, 1896.—I am, &c.,

MALCOLM M'NEILL, *Secretary.*

To the Parish Auditor.

EXTRACT FROM CIRCULAR TO TREASURERS OF POORHOUSE COMBINATIONS INDICATING THE BOOKS, &C., TO BE TRANSMITTED TO THE AUDITOR.

Local Government Board, Edinburgh, 6th May, 1897.

Sir,—

. . . . . .

[The instructions numbered 1, 2, and 3 are similar to those to Clerks to Parish Councils, and numbered 4, 5, 6 on p. 301.]

4. The following books should be transmitted to the Auditor together with the Accounts and Vouchers required, viz.:—Minute Books, Cash Books, Bank Books, Ledger, Clothing and Provision Receipt Books, Contractors' Books, and other books recording the various articles received in the Poorhouse, the several books kept by the Governor or other Poorhouse Officials showing the issue of the clothing, provisions, and other goods during the year, the Governor's Daily Diet Book, the Governor's Sick Diet Book, and the Medical Officer's Sick Diet Book. Tradesmen's Invoices of Goods delivered in the Poorhouse and records of receipts from sale of articles produced by labour of the inmates, and from sale of waste and refuse, should also be transmitted.

G. FALCONAR-STEWART,
Secretary.

The Treasurer of the Poorhouse Combination.

CIRCULAR TO CLERKS OF PARISH COUNCILS AS TO MANNER OF DEALING IN THE ACCOUNTS WITH GRANTS UNDER THE AGRICULTURAL RATES ACT, 1896.

Local Government Board, Edinburgh, 10th June, 1898.

Sir,—Several enquiries having been recently received concerning the manner in which the Grants under the Agricultural Rates, &c., Act, 1896, should be dealt with in the Abstract of Accounts, and also as to what Rental should be entered as the Assessable Rental, I am desired by the Board to inform you that—

(1) The amount of the Grant received by the Parish Council under the Agricultural Rates Act, in respect of each Rate (Poor, Education, Registration, &c.), should, in the Abstract of Accounts, be entered on the receipt side of the Current (or Inspector's) Account of such Rate under the head of "Government Grants," as "In relief of Agricultural Rates." It should *not* be included in the Assessment Accounts, but should appear in the Current Accounts only; and

(2) In the statement of "Valuation of Parish," the Assessable Rental of *Owners* should be given. In view, however, of the different Assessable Rental of Occupiers, consequent on the passing of the Agricultural Rates Act, it would be well also to show the Assessable Rental of *Occupiers* in the Abstract.

G. Falconar-Stewart,
Secretary.

The Clerk of the Parish Council.

Scottish Office Circular as to the Grant under the Agricultural Rates, &c. (Scotland) Act, 1896, and Local Taxation Account (Scotland) Act, 1898.

Scottish Office, Whitehall, S.W.,
14th September, 1898.

Sir,—A number of enquiries having been addressed by Parish Councils to this Office and to the Local Government Board with respect to the mode in which provision should be made for the deficiency arising on their accounts for 1897-98 in consequence of the grant for that year under the Agricultural Rates, &c. (Scotland) Act, 1896, having fallen short of their expectations, I am directed by the Secretary for Scotland to acquaint you for the information and guidance of your Parish Council—

(*a*) That a deficit occasioned through last year's grant having been over-estimated should be treated as any ordinary deficit, that is, made up equally by owners and occupiers;

(*b*) That the amount to be received from the Agricultural Rates Grant should be deducted from the total assessment payable by occupiers before fixing the occupiers' rate.

In parishes where a certified classification is not in force, the parochial rates for the current year should be ascertained in the following manner:—

1. The Parish Council will first ascertain the nett annual value by allowing the deductions specified in the 37th section of the Poor Law Act.

2. Let it be assumed that in a parish the nett annual value thus obtained is - - - - - - - - - - - £20,000

Of which the nett annual value of agricultural subjects (marked A in the Valuation Roll) amounts to - - - - - - - -	£8,000	
and of other subjects to - - - -	£12,000	£20,000

The Assessable Rental of the Parish will then be—

(A) For owner's rate, - - - - - - -	£20,000
(B) For occupier's rate (£12,000 *plus* ⅜ths of £8000), - - - - - - - - -	£15,000

3. Let it next be assumed that the estimated expenditure for poor law purposes in 1898-99 is - - - - - - - £1,900
and that the deficiency in the Poors Funds for 1897-98, including any deficiency arising in consequence of the Agricultural Rates Grant for that year having been overestimated, is (say) - - - - - - - - - - - £100

the total sum required for 1898-99 will thus be - - £2,000

From this total will fall to be deducted—

(A) Estimated receipts from grants in 1898-99 (other than the Agricultural Rates Grant), viz.:—

Pauper Lunacy Grant, - -	£250
Medical Relief Grant, - - -	50
Relief of Rates, - - - -	100
	£400

(B) Estimated receipts of a miscellaneous nature expected to be received in aid of assessments in 1898-99, *e.g.*, Mortifications, Contributions by relatives, &c. (say), - - - - - - - £100

Total estimated receipts (other than Agricultural Rates grant), - - - - - - - - - - - - - 500

leaving nett sum raiseable by Poor Rate in 1898-99, - - £1,500

4. Of the nett sum thus arrived at, one-half (viz., £750) will be raiseable from owners by a uniform rate of 9d. per £ on the Owners' Assessable Rental of £20,000; while the other half, under deduction of the amount of the Agricultural Rates Grant, will be raised from Occupiers by a uniform rate on the Occupiers' Assessable Rental of £15,000. If the amount of the Agricultural Rates grant in respect of the poor rate, as notified by Scottish Office circular of 12th May last, is £125, the sum actually raiseable from occupiers will be £625, and this will require a uniform rate on the rental of £15,000 of 10d. per £.

In parishes where a certified classification is in force, the only change brought about by the Agricultural Rates Act is a reduction of the occupiers' share of the assessment by the amount of the grant. An estimate of the nett sum to be raised by poor rate in 1898-99 should be framed as in the example of an unclassified parish given above. Let it be again assumed that the sum is £1500. £750 will fall to be raised from owners, and £750, less the Agricultural Rates Grant, will fall to be levied on occupiers in accordance with the classification at present existing in the parish.

I am in conclusion to refer to the provisions of the recently passed Local Taxation Account (Scotland) Act, 1898, in regard to which a number of queries have also been addressed to this Office. That Act increases, by a sum of £20,000, the amount annually distributable under Section 4 (3) of the Agricultural Rates, &c. (Scotland) Act, 1896, but only during the last three years of the continuance of the latter Act, *i.e.*, during the years 1899-1902. In

other words, the rates for the current year must, as above shown, be fixed on the assumption that the Agricultural Rates Grant will be of the same amount as was paid to the parish in 1897-98; but in 1899-1900, 1900-1 and 1901-2, the amount payable will be increased. It may be stated that, according to present estimates, the increase will be at the rate of about 2s. 6d. for every £1 paid to the Parish Council in 1897-98.

I am,
Sir,
Your obedient Servant,
COLIN SCOTT MONCRIEFF.

The Clerk of the Parish Council.

EXTRACT FROM CIRCULAR TO CLERKS TO PARISH COUNCILS, DATED 12TH APRIL, 1899, AS TO THE OBJECTIONABLE PRACTICE OF OFFICIALS RETAINING IN THEIR HANDS FROM TIME TO TIME LARGE AMOUNTS OF PARISH COUNCIL FUNDS, &C., &C.

1. In connection with the past year's audit it has been found that, in some cases, Collectors of Rates, Inspectors of Poor, or Clerks of Parish Councils are in the habit of retaining in their hands from time to time large amounts of Parish Council funds. This practice is, in the opinion of the Board, unnecessary and undesirable, and ought to be discontinued. All receipts by an Officer intromitting with Parish Council funds should be paid into the Parish Council Bank Account without delay, and, as pointed out in the Board's Circular of 30th April, 1897, all payments should, as far as possible, be made by cheque. Payments which cannot conveniently be made in that manner, *e.g.*, of aliment to the resident poor and of "office" or "petty expenses," should be made out of moneys drawn from the bank—the purpose for which the money is drawn being endorsed on the back of the cheque (before signature) in terms of the Board's Circular of 10th May, 1880, and duly engrossed in the minutes.

2. Attention is again directed to the form in which entries relating to the Agricultural Rates Grant should be made in the Abstract of Accounts, as indicated in the Board's Circular of 10th June, 1898. It should be understood that the amount of the Grant effeiring to *each* Rate must be separately set forth in the Abstract, under the Account to which it is applicable.

. . . . . .

G. FALCONAR-STEWART,
Secretary.

The Clerk of the Parish Council.

CIRCULAR TO CLERKS OF PARISH COUNCILS AS TO FORM OF ASSESSMENT ROLL.

Local Government Board,
Edinburgh, 6th July, 1900.

Sir,—The Board have been communicated with by various Parish Councils with reference to the form of Assessment Roll.

They recognise that recent legislation has considerably complicated the preparation of an Assessment Roll, and it seems very desirable, in the general interest, that it should be made as simple as possible, and that the labour involved should be minimised. At the same time it is necessary that the Roll should be drawn up in such a form as to enable the Parish Council and the Ratepayers to satisfy themselves that the rates have been properly levied and collected, and to permit of a satisfactory audit.

It appears that in the majority of Parishes at the present time an Assessment Roll is made up showing separately the *amount* payable in respect of each rate. Such a method is very laborious and, moreover, gives rise to the great difficulty, if not indeed the impossibility, of levying a fractional rate of say $\frac{1}{8}$d. per £ or less (which is frequently required to meet expenditure under the Registration Act) on small rentals.

The advantages of a cumulo collection are very apparent—

(1) The rates might be so adjusted from year to year as to make the total or "cumulo rate" imposed amount to a sum easily leviable, *e.g.*—

	Owners.
	d.
Poor Rate - - -	say 2·00
School Rate - -	,, 3·75
Registration Rate -	,, 0·03
Special Parish Rate	,, 0·22
"Cumulo Rate" - -	6·00

(2) In preparing the Assessment Roll, a calculation in respect of the "cumulo rate" only would be made, separate calculations for Poor, School, Registration, &c., Rates being thereby dispensed with.

(3) Only the total rate paid in respect of each rateable subject would, when collected, be entered in the Collector's Cash Book.

The sum collected would be allocated in proportion to the rate per £ levied for each purpose and carried to the Bank Account and the various Assessment Accounts.

The Day Cash Book should show periodically the amount received from Assessments and paid into Bank to the credit of the Parish Council, and should also show each intromission of the Inspector with the Bank Account. The Ledger should show in separate accounts (1) the Assessment paid into the Bank, and (2) the Inspector's dealings with the Bank Account.

For the guidance of these Parishes which have adopted a "cumulo collection" of rates the Board have drawn up a form of Assess-

ment Roll, which they suggest for Parishes which have no certified classification of occupants.

In regard to Parishes having a certified classification, only a slight modification of the form is necessary, the different classes of occupiers being substituted for "agricultural" and "non-agricultural" occupiers in the form.*

I am directed to request that you will submit this circular to the Parish Council at their next meeting.

G. Falconar-Stewart,
Secretary.

The Clerk of the Parish Council.

* Assessment Rolls for non-classified Parishes and for classified Parishes, in the form above referred to, may be had from Messrs. Morrison & Gibb, Ltd., Printers to His Majesty's Stationery Office, Queen Street, Edinburgh. Rolls with additional columns, showing date of payment of arrears, are also supplied.

Regulations as to Repayment of Loans by means of a Sinking Fund, framed by the Secretary for Scotland under Section 28, Sub-section (6), of the Local Government (Scotland) Act, 1894.

Whereas by Section 28, sub-section (6), of the Local Government (Scotland) Act, 1894, relating to loans raised by Scottish Parish Councils, it is enacted as follows:—

28. (6) "A Parish Council shall pay off every loan under this Section either by equal yearly or half-yearly instalments of principal, or of principal and interest combined, or by means of a sinking fund set apart, invested, and applied in accordance with regulations which may from time to time be made in that behalf by the Secretary for Scotland."

Now therefore, I, the Right Honourable Alexander Hugh, Lord Balfour of Burleigh, Her Majesty's Secretary for Scotland, in pursuance of the power given to me by the above-cited section, do hereby prescribe the following regulations:—

Regulations.

1. These regulations apply to cases in which a loan raised by a Parish Council in Scotland under Section 28 of the Local Government (Scotland) Act, 1894, is repayable by means of a sinking fund.

2. In these regulations the following expressions have the meanings hereinafter respectively assigned to them; that is to say—

The expression "loan" means principal moneys raised by an original exercise of borrowing powers.

The expression "determined period" means the period within which the Local Government Board for Scotland may determine in each case that a loan shall be repaid.

The expressions "repay" and "repayment," when occurring alone, denote the extinction of a loan at the expiry of the determined period.

The expression "premature repayment" means the extinction of a loan in whole or in part before the expiry of the determined period.

3. In every case to which these regulations apply, the sinking fund shall be either an accumulating sinking fund or a non-accumulating sinking fund, as the Parish Council may in each case decide.

4. An accumulating sinking fund shall be constituted and maintained as follows:—

(*a*) The Parish Council, in every year during the currency of the determined period, shall set apart and pay to the credit of the sinking fund such equal annual sums as will, with the accumulations thereof by way of compound interest at a rate selected by the Parish Council not exceeding three pounds per centum per annum (hereinafter called the selected rate), be sufficient to repay the whole of the loan within the determined period.

(*b*) The said annual sums shall (unless applied in premature repayment of the loan) be immediately invested, and accumulated by way of compound interest by investing the same, and the dividends, interest, and annual income thereof respectively, without delay, in any securities by these regulations authorised; and if and as often as the rate of interest by investment as aforesaid is not equal to the selected rate, any deficiency arising thereby shall be made good as soon as may be by additional payments into the sinking fund.

(*c*) The Parish Council may at any time during the currency of the determined period apply the whole or any part of the sinking fund in or towards the premature repayment of the loan, for the repayment of which such sinking fund was set apart. But in every case of partial premature repayment they shall, in addition to the annual payments hereinbefore prescribed, pay into such sinking fund in each year afterwards, and accumulate as hereinbefore prescribed, until the whole of the loan is repaid, a sum equal to one year's interest at the selected rate on the amount of the loan extinguished.

(*d*) Whenever and so long as the market value of the securities standing to the credit of the sinking fund shall be equal to the amount of the loan outstanding, the Parish Council may discontinue the payment to the sinking fund of the annual sums hereinbefore required to be paid thereto, and may in lieu of investing, as hereinbefore prescribed, the dividends, interest, and annual income of the sinking fund, apply the same in or towards payment of interest on the amount of the loan outstanding.

5. A non-accumulating sinking fund shall be constituted and maintained as follows:—

(*a*) The Parish Council, in every year during the currency of the determined period, shall set apart and pay to the credit of the sinking fund an annual sum equal to the total amount of the loan divided by the number of years in the determined period.

(*b*) The said annual sums shall (unless applied in premature repayment of the loan) be immediately invested in any securities by these regulations authorised; and the interest on such investments may be applied towards the equal annual payments to the sinking fund.

(*c*) The Parish Council may, at any time during the currency of the determined period, apply the whole or any part of the sinking fund in or towards the premature repayment of the loan, for the repayment of which such sinking fund was set apart. But in every case of partial premature repayment they shall continue to pay into the sinking fund until the whole of the loan is repaid the equal annual sums hereinbefore prescribed.

(*d*) Whenever and so long as the market value of the securities standing to the credit of the sinking fund shall be equal to the amount of the loan outstanding, the Parish Council may discontinue the payment to the sinking fund of the annual sums hereinbefore required to be paid thereto.

6. Nothing in these regulations contained shall be read as precluding a Parish Council from increasing the amounts payable to any sinking fund, and it shall be the duty of the Parish Council to increase such payments, if such increase appear necessary at any time in order to ensure the repayment of any loan within the determined period.

7. If the Parish Council out of the proceeds of the alienation of lands or heritages or out of other moneys received on capital account (not being borrowed moneys), discharge any borrowed moneys for the repayment of which a sinking fund has been set aside, the payments to the sinking fund may be reduced to such extent and on such terms as may be from time to time approved by the Secretary for Scotland. Borrowed moneys so discharged shall not be re-borrowed.

8. The Parish Council shall not re-borrow any moneys which have been prematurely repaid by the application of the whole or a part of any sinking fund; and if and as often as the Parish Council re-borrow moneys (at a diminished rate of interest or otherwise as may be convenient) for the purpose of replacing any loan or part of a loan for the repayment of which a sinking fund has been set apart, the following provisions shall have effect:—

1. The time for the discharge of any moneys so re-borrowed shall not be extended beyond the unexpired portion of the determined period.

2. For the purpose of repayment the moneys re-borrowed and the moneys originally borrowed shall be deemed the same loan.

3. The obligation of the Parish Council with respect to the repayment of the loan, and to the provision to be made by means of the sinking fund for such repayment shall not be diminished by reason of such re-borrowing.

9. The Parish Council may invest the moneys required by these regulations to be invested in any securities in which trustees are, by the law of Scotland for the time being, authorised to invest trust moneys, or in any mortgages, bonds, debentures, debenture stock, stock, or other securities (not being annuity certificates or securities payable to bearer) duly issued by any local authority in Great Britain as defined by Section 4 of the Local Authorities Loans (Scotland) Act, 1891, other than the borrowing Parish Council. The Parish Council may from time to time vary and transpose such investments.

10. All payments made by a Parish Council to defray expenses incurred in connection with the formation, maintenance, investment, re-investment, application or management of a sinking fund shall be made exclusive of and in addition to the payments by these regulations prescribed.

11. The first annual payment to a sinking fund shall be made within one year from the raising of the loan.

12. No moneys shall be taken out of any sinking fund except for the repayment or premature repayment of a loan.

(Signed) Balfour of Burleigh,
H.M. Secretary for Scotland.

Scottish Office, Whitehall, 20th October, 1900.

TABLES FOR CALCULATING ACCUMULATING SINKING FUNDS.

Table A.

Showing the equal annual sums to be set apart and accumulated at compound interest in order to provide £1 at the end of any number of years not exceeding 50.*

Determined Period.	Selected Rate 2½%	Selected Rate 2¾%	Selected Rate 3%
1	1·00000000	1·00000000	1·00000000
2	·49382716	·49321825	·49261084
3	·32513717	·32433248	·32353036
4	·24081788	·23992059	·23902705
5	·19024686	·18929832	·18835457
6	·15654997	·15557083	·15459750
7	·13249543	·13149748	·13050635
8	·11446735	·11345795	·11245639
9	·10045689	·09944095	·09843386
10	·08925876	·08823972	·08723051
11	·08010596	·07908629	·07807745
12	·07248713	·07146871	·07046209
13	·06604827	·06503252	·06402954
14	·06053652	·05952457	·05852634
15	·05576646	·05475917	·05376658
16	·05159899	·05059710	·04961085
17	·04792777	·04693186	·04595253
18	·04467008	·04368063	·04270870
19	·04176062	·04077802	·03981388
20	·03914713	·03817173	·03721571
21	·03678733	·03581941	·03487178
22	·03464661	·03368640	·03274739
23	·03269638	·03174410	·03081390
24	·03091282	·02996863	·02904742
25	·02927592	·02833997	·02742787
26	·02776875	·02684116	·02593829
27	·02637687	·02545776	·02456421
28	·02508793	·02417738	·02329323
29	·02389127	·02298935	·02211467
30	·02277764	·02188442	·02101926
31	·02173900	·02085453	·01999893
32	·02076831	·01989263	·01904662
33	·01985938	·01899253	·01815612
34	·01900675	·01814875	·01732196
35	·01820558	·01735645	·01653929
36	·01745158	·01661132	·01580379
37	·01674090	·01590953	·01511162
38	·01607012	·01524764	·01445934
39	·01543615	·01462256	·01384385
40	·01483623	·01403151	·01326238
41	·01426786	·01347200	·01271241
42	·01372876	·01294175	·01219167
43	·01321688	·01243871	·01169811
44	·01273037	·01196100	·01122985
45	·01226751	·01150693	·01078518
46	·01182676	·01107493	·01036254
47	·01140669	·01066358	·00996051
48	·01100599	·01027158	·00957777
49	·01062348	·00989773	·00921314
50	·01025806	·00954092	·00886549

* Note.—It is assumed that the Sinking Fund is set apart at the *end* of each yearly period, starting from the date of the loan.

TABLE B.

Showing the amount of £1 per annum accumulating at compound interest, in any number of years not exceeding 50.†

Years.	Selected Rate 2½%	Selected Rate 2¾%	Selected Rate 3%
1	1·000000	1·000000	1·000000
2	2·025000	2·027500	2·030000
3	3·075625	3·083256	3·090900
4	4·152515	4·168045	4·183627
5	5·256328	5·282667	5·309135
6	6·387736	6·427940	6·468409
7	7·547430	7·604708	7·662462
8	8·736115	8·813838	8·892336
9	9·954518	10·056218	10·159106
10	11·203381	11·332764	11·463879
11	12·483466	12·644415	12·807795
12	13·795552	13·992137	14·192029
13	15·140441	15·376921	15·617790
14	16·518852	16·799786	17·086324
15	17·931926	18·261780	18·598913
16	19·380224	19·763979	20·156881
17	20·864730	21·307488	21·761587
18	22·386348	22·893444	23·414435
19	23·946007	24·523014	25·116868
20	25·544657	26·197397	26·870374
21	27·183274	27·917825	28·676485
22	28·862855	29·685566	30·536780
23	30·584427	31·501919	32·452883
24	32·349037	33·368221	34·426470
25	34·157763	35·285848	36·459264
26	36·011708	37·256208	38·553042
27	37·912000	39·280754	40·709633
28	39·859800	41·360975	42·930922
29	41·856295	43·498402	45·218850
30	43·902703	45·694608	47·575415
31	46·000270	47·951210	50·002678
32	48·150277	50·269868	52·502758
33	50·354034	52·652289	55·077841
34	52·612885	55·100227	57·730176
35	54·928207	57·615483	60·462081
36	57·301412	60·199909	63·275944
37	59·733947	62·855407	66·174222
38	62·227296	65·583930	69·159449
39	64·782979	68·387489	72·234232
40	67·402553	71·268144	75·401259
41	70·087617	74·228018	78·663297
42	72·839807	77·269289	82·023196
43	75·660803	80·394194	85·483892
44	78·552323	83·605035	89·048409
45	81·516131	86·904173	92·719861
46	84·554034	90·294038	96·501457
47	87·667885	93·777124	100·396500
48	90·859582	97·355995	104·408395
49	94·131071	101·033285	108·540647
50	97·484348	104·811700	112·796867

† NOTE.—It is assumed that the sum of £1 is set apart at the *end* of each year.

EXAMPLES.

(1) What annual sinking fund payment will be required to pay off a loan of £1,000 in 30 years, the selected rate of accumulation being 3 per cent.?
According to Table A, the required sum is ·02101926×1,000=21·01926=£21 0/5.

(2) In the foregoing case, what sum should be in the Sinking Fund at the end of 20 years?
According to Table B, the required sum is 26·870374×21·01926=564·795=£564 15/11.
In the event of any portion of the Sinking Fund having been applied, during the currency of the 20 years, in premature repayment of the loan, the sum so applied, together with the sum actually at the credit of the fund at the end of the 20 years, should be at least equal to £564 15/11, as found above.

(3) Again, the sum which should be in the Sinking Fund at the end of 29 years according to Table B is 45·218850×21·01926= £950·46674
The interest on which, at 3 per cent., for the final year of the determined period is .. .. 28·51400
making £978·98074
Adding to which the final sinking fund payment—*i.e.*, for 30th year, viz., 21·01926
the sum in the fund is exactly equal to the amount of the loan, viz., £1000·00000

CIRCULAR TO CLERKS TO PARISH COUNCILS (1) AS TO EXPENSES OF COMMITTEES DEPUTED TO MAKE INQUIRIES, &C., AND (2) AS TO THE ADVERTISING OF THE ABSTRACT OF ACCOUNTS.

Local Government Board,
Edinburgh, 10th April, 1901.

PARISH AUDIT.*

Sir,—I am directed by the Local Government Board to inform you that, in answer to communications by Parish Councils as to their power to refund outlays incurred by a Committee of their number or by individual members appointed to make inquiries or to attend meetings outside the Parish, the Board have replied that, as a general rule, a Parish Council is entitled in such circumstances to incur reasonable expenditure in obtaining information or advice to assist them in carrying out their statutory duties. The Board, however, have to point out that the expense of attending meetings or conferences having reference to matters not strictly connected with Parish Council administration cannot be legally defrayed out of the rates.

From Returns recently received by the Board it has been observed that in several Parishes the Abstracts of Accounts have not, on the completion of the Audit, been advertised in terms of Section 70 (8) of the Local Government (Scotland) Act, 1889. I have to refer you to the instruction at the top of page 150 of the Board's Rules, &c., to Parochial Authorities, and to request that in future you will transmit to the Auditor a copy of the newspaper containing the publication of the General Abstract, in order that he may be satisfied that the statutory provision has been given effect to.

. . . . . .

G. FALCONAR-STEWART,
Secretary.

The Clerk of the Parish Council,
or
The Clerk to the Landward Committee.

* See also Circular of 13th April, 1905, p 319

CIRCULAR TO CLERKS TO PARISH COUNCILS, &C., (1) AS TO PREPARATION OF THE ASSESSMENT ROLL, AND (2) AS TO TREATMENT OF SUSPENSE POOR IN ABSTRACT OF ACCOUNTS.

Local Government Board,
Edinburgh, 18th April, 1903.

PARISH AUDIT.

1. *Assessment Roll.*

Sir,—It has been brought to the notice of the Board that for a number of years prior to the introduction of the present Audit

in 1896 a Collector of Rates, who was entrusted with the preparation of the Parish Assessment Roll, appropriated large sums to his own use by means of a course of systematic fraud which the Auditors appointed annually by the Parish Council had failed to detect. The Board have accordingly given careful consideration to the whole matter of the preparation of the Roll and the collection of the Rates.

The Valuation Roll is the basis of assessment. When completed it is, under Section 12 of the Valuation Act, 1854, authenticated, and the County Clerk or Town-clerk, as the case may be, furnishes to the Clerks of the several Councils within the County or Burgh a copy of so much as relates to their respective Parishes. Although not specifically stated, it seems to be implied that the copy should be certified by the County Clerk or Town-clerk, and, looking to the important use to which the Valuation Roll is put, there can be no doubt as to the expediency of such a certificate.

The Board are therefore of opinion that the Assessment Roll should be prepared from a copy of the Valuation Roll bearing the certificate of the County Clerk or Town-clerk, showing the total valuation of the Parish or portion of the Parish in the County or Burgh.

In many Parishes the Assessment Roll is prepared by the Collector of Rates—a practice to which, from an accounting point of view, there are obvious objections. But, as it is the statutory duty of the Parish Council to "make up or cause to be made up" the Assessment Roll (Section 40 of the Poor Law (Scotland) Act, 1845), it appears to the Board that it would be at least expedient that, before the commencement of the collection, a Committee of the Parish Council, or some one with a local knowledge—not being the Inspector or Collector—delegated by them, should compare it with the Valuation Roll or Valuation Rolls, and also see that the deductions under the Poor Law Act of 1845 and under the Agricultural Rates Act are correct, and thereafter certify to the following effect:—

> "We hereby certify that we have carefully examined the particulars in the various columns of this Assessment Roll, and that they are correct to the best of our knowledge and belief; that the Gross Rentals therein agree with those in the Valuation Roll; that the deductions in terms of the 37th Section of the Poor Law (Scotland) Act, 1845, fixed by the Parish Council, and under the Agricultural Rates, &c. (Scotland) Act, 1896, have been properly given effect to; and that the total amount of assessment to be collected by the Parish Council is pounds shillings and pence.
>
> " , *Parish Councillor.*
>
> " , *Parish Councillor.*"

In Parishes where a certified classification of occupants is still in operation the certificate will, of course, be varied to the effect that the classification has been properly made.

In consequence of the complexity of the Parish Council Assessment Roll, the Board issued with their Circular of 6th July, 1900, a form of Roll with columns for, *inter alia*, the rate and amount

of deductions allowed to each subject in computing the Assessable Rental, and they recommended the same for adoption.

It seems, however, that in a number of Parishes old forms of Roll, which do not set out the particulars of the gross rental or the deductions, are still in use. Such forms are in many Parishes inadequate for the purposes of examination prior to the certification above referred to and also for those of audit, and should be discontinued forthwith, and if this be not done, or undue and unnecessary labour be involved in verification of the Roll at audit, the Board think it right to bring under the notice of Parish Councils that it may be their duty to hold that the usual audit fee is insufficient remuneration for the additional work thereby rendered necessary.

It seems to the Board that it is not too much for them to ask, or for the ratepayers to expect, that Parish Councillors should take an active interest in and exercise supervision over the accounting as well as the other parochial work, and, further, see that their officers are performing their accounting duties in accordance with the Board's requirements. In the view of the Board there should be a hearty co-operation between the Parish Council and their officials in all matters relating to Parish Council administration.

2. *Suspense Poor.*

It appears that there is considerable dubiety as to the meaning of the term "Suspense Poor," payments for whom form an item of "Maintenance" in the prescribed form of Abstract of Accounts, and that, in consequence, there is a want of uniformity in showing the cost of that class of paupers.

The heading "Payments for Suspense Poor" should embrace all payments made to those poor who are not on the Register of the Parish and are not vagrants or admittedly chargeable to other Parishes. But the item will, of course, be limited to the poor in suspense at the closing of the accounts. The cost of those poor persons who, although on the Suspense Roll during the year, have had their settlements determined before 15th May, will not appear under this heading but under the other appropriate headings of "Maintenance" or "Medical Relief," &c., or under "Cost of Other Parish Poor."

. . . . . .

When transmitting the books and accounts to the Auditor, a list of the names, addresses, and occupations of the Parish Councillors should be furnished to him.

G. Falconar-Stewart,
Secretary.

The Clerk of the Parish Council,
or
The Clerk of the Landward Committee.

CIRCULAR TO CLERKS TO PARISH COUNCILS, &c., AS TO EXPENSES OF MEMBERS ATTENDING CONFERENCES, &c.

Local Government Board,
Edinburgh, 13th April, 1905.

PARISH AUDIT.

Sir,—I am directed to refer you to the first paragraph of the Circular of the Local Government Board, dated 10th April, 1901, concerning the power of Parish Councils to refund outlays incurred by members of the Council appointed to attend meetings outside the Parish. It stated that, "as a general rule, a Parish Council is entitled . . . to incur reasonable expenditure in obtaining information or advice to assist them in carrying out their statutory duties," and also that "the expense of attending meetings or conferences, having reference to matters not strictly connected with Parish Council administration, cannot be legally defrayed out of the rates."

2. The Board have had occasion to reconsider this question, and have decided that expenses of members, who have been appointed to attend meetings or conferences outside the Parish, can be refunded by the Parish Council only when the subject of discussion immediately concerns the actual statutory duties of the Council, and enables the Councillors to perform these duties more efficiently than they otherwise could. Repayment of the expenses would not be justified where the object of such attendance would have been better, and probably more economically, attained by the employment of an expert. It is obvious, however, that each case must be considered on its merits, keeping in view the general principles enunciated above.

3. In their Rules, &c., to Parochial Authorities, and in Circular Letters, the Board have, from time to time, directed the attention of Parish Councillors to the important duties which devolve upon them in connection with Parish Council finance and accounting; but they have reason to believe that Parish Councillors have too little opportunity of becoming conversant with these Rules, &c., or of refreshing their memory with regard to them. As a result, Parish Councillors take comparatively little interest in finance and accounting, which they would willingly do if acquainted with the duties that their position as trustees of public funds demands of them. I am accordingly to request all Inspectors of Poor to direct the attention of individual members of the Council, and more especially of the Finance Committee, to the accounting and audit requirements dealt with in the Board's Rules and supplementary Circulars, and to provide facilities for enabling the members to become thoroughly familiar with the same.

. . . . . .

G. FALCONAR-STEWART,
Secretary.

The Clerk of the Parish Council,
The Clerk of the Landward Committee, or
The Treasurer of the Poorhouse Combination,

CIRCULAR TO CLERKS TO PARISH COUNCILS, &c., (1) AS TO SEARCHES AND EXTRACTS UNDER THE REGISTRATION ACTS, AND (2) AS TO TRAVELLING EXPENSES IN THE VISITATION OF PAUPERS.

Local Government Board,
Edinburgh, 2nd April, 1906.

PARISH AUDIT.

Sir,

1.—*Searches and Extracts under the Registration Acts.*

During the course of the past year's Audit the Board had occasion to consider the meaning of the last proviso of Section 17 of the Registration Act of 1860, which reads—

> "Provided also, that where any search or extract shall be required by or on behalf of a pauper, the registrar shall be entitled to include the cost thereof in the account which he is required to render to the parochial board under the fiftieth section of the Act first before recited."

It appears that in many places an unduly wide interpretation has been placed upon this section, with the result that searches and extracts required by Parish Councils for administrative purposes have been paid for by the Registration Authority, and not by the Parish Council obtaining the information. The Board have expressed the opinion that when a Parish Council requests searches in, or extracts from, Registration Records with a view to determining the settlement of a pauper, the cost should be paid out of the Poor Rate by the parish ordering the same. In this view the Registrar General concurs.

2.—*Travelling Expenses in the Visitation of Paupers.*

The Board, in their Circular of 13th April, 1905, intimated, *inter alia*, that excessive expenditure incurred in visiting pauper lunatics in asylums had been held by them to be illegal. Having had further occasion to consider this question, the Board now desire to communicate, for the information and guidance of Parish Councils, the general principles by which, in their opinion, travelling expenses at the cost of the rates, in connection with the visitation of paupers outwith the parish, should be regulated.

(a) *Visitation of Children.*—Supervision being essential to the success of the boarding-out system, reasonable travelling expenses—duly vouched—of members and of officers engaged may be charged against the rates. But there is no necessity for more than two or, at the outside, three representatives of the Parish Council (say, one or two members and the Inspector of Poor) to go together on such visitation, and accordingly if the expenses of a larger number are charged, the accounts will not be passed.

(b) *Visitation of Lunatics in Asylums.*—The general welfare, treatment, and comfort of the poor in asylums are under the strict supervision of the General Board of Lunacy, and the visitation of the inmates with the view of inspection on these

points is apparently unnecessary. Visitation with the view of ascertaining whether any of the lunatic poor chargeable to the parish are fit subjects for being boarded out may, however, be sometimes desirable in the interests of economy and of the patients themselves, but two or, at the outside, three representatives of the Council are amply sufficient for the purpose.

(c) *Visitation of the Poorhouse.*—The Poorhouse is in a different position as regards visitation, and the Visiting Committee have more onerous duties to perform in satisfying themselves as to the quantity and quality of provisions, the supervision, the cleanliness, heating and ventilation of the house, and its administration generally. Poorhouse visitation by the Visiting Committee is, however, specially provided for by Rule XIV. of the "Rules and Regulations for the Management of Poorhouses."

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G. Falconar-Stewart,
Secretary.

To

The Clerk of the Parish Council.
The Clerk of the Landward Committee.

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Circular to Clerks to Parish Councils, &c., as to Various Matters affecting the Audit of Accounts.

Local Government Board,
Edinburgh, 15th March, 1910.

Parish Audit.

Sir,—The Local Government Board regret that, from time to time, cases come before them of great laxity in Parish Council accounting, which in some instances has been the cause of, or has facilitated, defalcation by the officer concerned.

While believing that, in the great majority of parishes, the accounting arrangements are perfectly satisfactory, the Board have reason to fear that in some cases Parish Council officials regard accounting as an irksome and subordinate duty, to be attended to more or less spasmodically, and that the Parish Councils themselves, relying upon the annual audit, consider careful and thorough supervision of the accounts unnecessary. I am directed to point out that, in the opinion of the Board, it is one of the most important duties of an officer intromitting with public funds to account for his intromissions promptly, fully, clearly, and with unfailing regularity, and that, in the case of Parish Council funds, the responsibility for seeing that this is done rests, in the first instance, with the Parish Councils, either directly, or through their Finance Committees. The Board accordingly trust that the Parish Council or their Committee will carefully examine the

accounts from time to time during the year, more especially the Inspector's Day Cash Book, the Collector's Cash Book, and the Bank Pass Books.

Accounting of Inspectors of Poor.

I am instructed by the Board to redirect the attention of Inspectors of Poor to paragraph 1 of their Accounting and Audit Circular, No. 3/1899, of date 12th April, 1899, and to state that in future they will require strict observance of the following Regulations in regard to Accounting:—

1. The Accounts of the Inspector of Poor shall be kept entirely separate from the Accounts of the Collector of Rates.

2. The Inspector of Poor shall receive no Parish Council moneys from the Collector of Rates. Where the Inspector of Poor is also Collector of Rates he will, in his capacity as Collector, pay into bank the rates received by him, and enter the sums so paid into bank in the Collector's Cash Book in the column specially provided for such entries. He will further, as Inspector of Poor, pass the rates lodged in bank through his Inspector's Day Cash Book in the following manner:—

Rates received, - - -	£	: :
Paid into bank, - - -		£ : :

3. All moneys received, whether from other parishes, from relatives of paupers, or from other sources (not being sums drawn from bank), shall be promptly paid into bank, and shall not be applied to current expenditure without passing through the Bank Account.

4. Payments shall as far as possible be made by cheque duly signed and countersigned in terms of the statute.

5. Payments for aliment and for office expenses and petty expenses shall be made only out of moneys drawn from bank—the purpose or purposes for which the money is drawn being endorsed on the back of the cheque before signature, and duly engrossed in the Minutes.

Accounting of Collectors of Rates.

Where the office of the Collector of Rates is not far distant from a bank, the Collector should sum, in his Cash Book, the rates received, duly balance his collection, and lodge in bank, daily, the rates in his hands, with the exception of such small sum as may be required for change. Where, however, on account of the distance of the Collector's office from the nearest bank, a daily lodgment in bank is impracticable, the Collector should lodge the rates frequently during the early part of the collection, when the rates are coming in freely. When the collection is nearly complete, and the rates received daily are small in amount, a bank lodgment may be made less frequently, but the cash in the Collector's hands should never be allowed to exceed, say, £10. Cheques received in payment of rates should be transmitted to the bank by post, as received.

To secure uniformity in the method of accounting for the rates collected, the Board have, by Order, prescribed a form of Collector's Cash Book. A copy of the Order, dated 14th instant, is enclosed.

PAYMENTS TO SCHOOL BOARDS.

The Accountant for Scotland to the Scotch Education Department has informed the Board that, during the year ended 15th May last, in a very large number of cases, the Rating Authority did not pay over to the School Board the sum actually requisitioned for, under Section 44 of the Education (Scotland) Act, 1872, but a sum greater or smaller according to the amount actually collected. I have to refer you to the Minute of the Board of Supervision, dated 23rd July, 1879, printed on page 119 of the Board's Rules, &c., to Parochial Authorities, and to point out that, where the district of the Parish Council and the district of the School Board are identical, the School Board intimate the *amount* to be provided by means of a rate, and that, in such cases, it is the duty of the Parish Council to pay over to the School Board the amount so requisitioned. If the produce of the rate is more than the sum requisitioned, the balance will be retained by the Parish Council and shown in the Education Rate Account; if the produce of the rate is less than the sum requisitioned, the Parish Council may make up the deficiency in such manner as they find most expedient, the deficit being shown as a debtor balance in the Education Rate Account. The surplus or deficiency, as the case may be, must of course be taken into consideration in levying the Education Rate in the following year.

EXPENDITURE UNDER THE CHILDREN ACT, 1908.

The Children Act, 1908, placed a new service upon Parish Councils, and, where expenses have been incurred under that Act, a special heading for the same should be inserted in the Abstract of Accounts, following the heading "Vaccinations under the Vaccination Act."

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A. MURRAY,
Secretary.

The Inspector of Poor,
The Collector of Rates, and
The Clerk of the Parish Council.

CIRCULAR TO CLERKS TO PARISH COUNCILS, &C., AS TO VARIOUS MATTERS AFFECTING THE AUDIT OF ACCOUNTS.

Local Government Board,
Edinburgh, 29th May, 1911.

PARISH AUDIT.

Sir,—Several cases of breach of trust on the part of Parish Council Officials having come before the Board during the past year, it has been deemed necessary that further consideration should be given to the question of Parish Council accounting, and its supervision by the Council.

The Board, in the first instance, assume that, in every parish, the instructions contained in their Circular Letter of 15th March, 1910, have been rigidly attended to by the Inspector of Poor and by the Collector of Rates.

These instructions require, *inter alia*:—

(1) That the accounts of the Inspector of Poor be kept entirely separate from those of the Collector of Rates;

(2) That the rates collected be accounted for in the prescribed form of Collector's Cash Book; and

(3) That the rates and all other receipts be promptly paid to the credit of the Parish Council Bank Account.

Where the Collector is not also Inspector of Poor, he should regularly and promptly advise the Inspector of the amounts of rates lodged in Bank. The Inspector will then make separate entries in his Cash Book relative to every such sum.

The Board deem it expedient to make an alteration on the form of Inspector's Day Cash Book, so that the Bank transactions, in addition to being included (as at present) in the Total Receipts and Total Payments, may also be shown in separate columns.

The altered form of book, which is prescribed by the accompanying Order, dated 24th instant, will be substituted for the existing form of Day Cash Book as from 16th instant.

The new form, which, the Board understand, is at present in use in many parishes, will enable the balances of both the Inspector and the Council to be readily ascertained at any time. All receipts will be entered on the left hand page of the Cash Book, and all payments will be entered on the right hand page. The columns "Total Receipts" and "Total Payments" will contain the same entries as the money columns in the existing form of Day Cash Book. The only change in the keeping of the book will be the entering of the bank transactions in the "bank" columns *in addition* to the entering of these transactions in the "total" columns.*

The Board have again to advert to the duty of Parish Councils to supervise carefully the accounts of their officials. It has been frequently found that, where no Finance Committee has been appointed by the Parish Council, and where the books of the Inspector of Poor and Collector of Rates are simply laid on the table at each meeting, the duty of examining the books and accounts is left until the other business is finished, when there may be little or no time, or indeed inclination, to undertake it. On the other hand, it is found that, where a Finance Committee is appointed, a closer supervision of the accounts is generally exercised. In other words, where the work of supervising the accounts has to be done by the whole Council as a part of the ordinary business of the meetings, it is often neglected or inefficiently carried out, whereas, when the duty and accompanying responsibility is devolved upon certain selected members of the Council, the work is more conscientiously performed.

Accordingly, the Board strongly urge Parish Councils who have not hitherto appointed a Finance Committee, to appoint such a

*The alteration of the form does not involve the purchase of new books. It will be sufficient to change the headings of the money columns in the existing Inspector's Day Cash Book, so that they will correspond with the headings in the prescribed form.

Committee—composed of two or three members with some knowledge of accounting—to deal, in the first instance, with questions of finance, and to supervise, in the Parish Council Office or elsewhere, the accounts of the officials from time to time, and more especially prior to the meetings of the Council, the result of such supervision being reported to the Council, and duly minuted.

It has been thought advisable to indicate briefly the nature of the supervisory duties entrusted to Finance Committees. Such duties may be taken to be—

Collector's Department.

(1) To compare the total Valuation in the Assessment Roll with the total in the Valuation Roll or Valuation Rolls, and to see, by calculation based on the authorised rates and the totals of the Assessable Rental, that the amount of assessment to be charged against the Collector is substantially correct, and thereafter to certify the Roll in terms of the Board's Circular of 18th April, 1903.

(2) To see that the rates as collected are accounted for in the prescribed form of Collector's Cash Book; that they are promptly paid into Bank; and that an entry for each Bank payment is duly made in the Collector's Cash Book.

(3) To check such payments into Bank against Bank Pass Book.

(4) Where there is no assessment appeal committee of the Parish Council, to consider each appeal for exemption from payment of rates, and to make a recommendation as to each case.

(5) To scrutinise the arrears soon after the date upon which, according to the Demand Note, the rates are payable, and to indicate the cases in which action should be taken to enforce payment.

(6) To examine the list of arrears of rates before the close of the financial year, and, where necessary, to recommend the writing off of such as are considered irrecoverable;* thereafter to see that the amount of assessment charged against the Collector under (1) above has been fully accounted for by (*a*) rates collected, (*b*) irrecoverable in respect of unlet property, (*c*) relieved, and (*d*) arrears.

Inspector's Department.

(7) To compare the bank transactions in the Inspector's Cash Book or Cash Books with the Bank Pass Books.

(8) To examine the payments in the Inspector's Cash Book or Cash Books, to see that they are supported by proper vouchers, and that they have been authorised by the Parish Council, or that, where not previously authorised, they are payments which may be properly passed by the Council.

(9) To examine accounts rendered for payment, and to see that they are such as may be properly authorised by the Council.

(10) To check the summations of the Cash Book or Cash Books, and to see that at no time is the Inspector drawing money from bank in excess of his requirements, or keeping an undue balance of Parish Council funds in his hands. The Chairman of the Finance

* This can be readily done from the receipts where the form of combined Demand Note, Receipt, and Counterfoil, in book form, approved by the Board, is in use.

Committee should sign or initial the Cash Books after each examination.

(11) To see that a separate till or cash box for the Parish Council moneys is kept by each official intromitting with the funds of the Council and, where it is considered necessary, to call for the production of the balance in hand as shown by the Cash Book.

The report by the Finance Committee to each meeting of the Parish Council should bear that each of these matters has been dealt with by them.

The Board are anxious that Parish Councils should fully realise that, while the Auditor is responsible for a thorough and exhaustive audit of the accounts of the year, that audit, in terms of the statute, is not conducted until the accounts of the year have been closed and balanced and certain statutory preliminaries observed; that such audit cannot prevent breach of trust during the year, or discover breach of trust until, it may be, many months after it has been committed; and that, therefore, Parish Councils, in their position as trustees of the ratepayers, have a serious responsibility in examining, and satisfying themselves as to the accuracy of the accounts during the currency of the year.

I am to add that, where a Parish Council or Finance Committee desire further information or explanations with regard to their accounting duties, the Board will be glad to give the same by letter, or will instruct one of their accounting officials to meet the Parish Council and to discuss the matter with them.

This circular is transmitted in duplicate. I have to request that you will hand one copy to the Chairman of your Parish Council, and that you will submit the other copy to the first meeting of the Council, and inform me of the action which they propose to take on the matters referred to therein.

A. Murray,
Secretary.

The Clerk to the Parish Council.
The Inspector of Poor.
The Collector of Rates.

ILLEGAL PAYMENTS.

The following payments by Parish Councils have from time to time in the course of the Audit of the Accounts been held by the Board to be illegal:—

1. Cost of opposing Bills in Parliament.
2. Expenses in connection with Churchyards (other than Burial Grounds under the Burial Grounds Act) not formally transferred to the Parish Council by Minute of the Heritors or otherwise.
3. Charges for entertainments and trips for the sane poor.
4. Cost of refreshments of Parish Councillors and Officials at Meetings of the Parish Council.
5. Cost of conveyance of Parish Councillors to Meeting of the Council.
6. Donations to Soup Kitchens.

7. Cost of Collection of School Rate in "unassessed" parish.
8. Compensation to Collector for loss of office.
9. Retiring allowances to former Collector of Rates, and former Curator of Cemetery.
10. Subscription to Fire Brigade where a Parish Council have no heritable property which might derive benefit from the services of the Fire Brigade in the event of a fire.
11. Expenses of a member of Parish Council attending a conference on Light Railways.
12. Gratuity to Letter-Carrier.
13. Gratuity to widow of late Inspector of Poor.
14. Jubilee treats and allowances to paupers.
15. Payments for advertising and printing in connection with the celebration of the Jubilee of Queen Victoria.
16. Donations to Quarrier's Orphan Homes.
17. Trips to Poorhouse children.
18. Payments to pianist for entertainment to Poorhouse inmates.
19. Payments for goods supplied to or work performed for paupers by a member of the Parish Council.
20. Allowance to members of a House Committee for trouble in preparing the annual inventory of Poorhouse stock.
21. Instalments in repayment of, and interest on, loans over Parish Council Offices in Parishes partly Burghal and partly Landward.
22. Payment to Town-clerk for making up Roll of Voters.
23. Erection and subsequent removal of notice boards in the Landward part of a Parish.
24. Metalling of a private road.
25. Refreshments at Parish Council Election.
26. Payment for coals supplied to poor not upon the Register of Poor.
27. Extra aliment paid to each of the Registered Poor on 30th December.
28. Rent of hall for meeting of ratepayers to hear candidates at Parish Council Election.
29. Payment to a member of Parish Council for use of room for Council meetings.
30. Payment for goods supplied to, or work performed for, the Parish Council by a member thereof.
31. Expenses of attending conference to promote taxation of land values.
32. Cost of advertising certain local holidays.
33. Outlay on improvements on side walk, and repairs, of County highway.
34. Payment of Feu Duty of proposed site of Medical Officer's house.
35. Cost of introduction of water supply to, and other repairs and improvements on, a Medical Officer's house not vested in the Parish Council.
36. Payment to a member of the Parish Council for use of room for collecting rates.
37. It was further held that it was illegal to charge against the Poor Rate the expenses of an Inspector of Poor in visiting Parish Council roads.
38. Expenses in connection with "Shelter House" or "Casual Sick House" used to shelter able-bodied tramps, not being proper objects of relief.

39. Cost of plans of a proposed dwelling-house for a Medical Officer.
40. Cost of calling meetings of ratepayers to consider Resolution of District Committee to form Special Drainage District, and payment for use of hall for said meetings.
41. Payment for funeral expenses of a man found dead on the road.
42. Cost of decorating Parish Council Office with flags, &c., on the occasion of a Royal Visit to the District.
43. Cost of an Address of Condolence by the Parish Council to the King on the death of Queen Victoria.
44. Law agent's account for precognoscing witnesses in connection with representation to District Committee relative to right-of-way.
45. Printing bills and cleaning and lighting room for ratepayers' meeting to nominate candidates for election to Parish Council.
46. Printing, &c., of Valuation Roll.
47. Free vaccination of persons not on the Poor Roll.
48. Assessments on Burial Grounds. (Burial Grounds are exempt under 37 & 38 Vict. c. 20.)
49. Expenses of attendance of representative of Parish Council at meetings of District Committee.
50. Cost of advertisement calling a public meeting in connection with the Coronation of King Edward VII.
51. Coronation treats and allowances to paupers.
52. Payments by a Parish Council to one of its members in respect of aliment for his wife, a pauper lunatic residing in family with him.
53. Contribution to a Shelter House or House of Refuge used to shelter able-bodied tramps, not being proper objects of relief.
54. Subscription to a Cottage Hospital in which paupers were not received for treatment.
55. Account for law expenses incurred by a woman prior to becoming chargeable as a pauper.
56. Fitting up and repairing seats placed at the side of a public road under the control of the County Council.
57. Use and upkeep of land for a free coup.
58. Excessive expenditure on clothing supplied to a pauper girl on leaving the poorhouse to enter domestic service.
59. Excessive expenditure incurred in visiting lunatic paupers in asylum.
60. Medicines supplied to a woman who was not a pauper.
61. Retiring bonus or gratuity to a Governor of a Poorhouse.
62. Excessive expenditure on the Inspector's travelling expenses.
63. Expenditure on the formation of a new footway.
64. Law expenses arising out of the assertion by a Parish Council of rights-of-way.
65. Law expenses arising out of enquiry into the rights and privileges of the public to certain lands.
66. Payments for repairs on a public well.
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